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# PART1200 [RESERVED]

# PART 1201—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 55 FR 37222, Sept. 10, 1990, unless otherwise noted.

## Subpart 1—Introduction

### § 1201.100 Creation and authority.

The National Aeronautics and Space Administration was established by the National Aeronautics and Space Act of 1958 (72 Stat. 426, 42 U.S.C. 2451 et seq.), as amended (hereafter called the ''Act'').

### § 1201.101 Purpose.

It is the purpose of the National Aeronautics and Space Administration to carry out aeronautical and space activities of the United States. Such activities shall be the responsibility of, and shall be directed by, the National Aeronautics and Space Administration, except that activities peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States shall be the responsibility of, and shall be directed by, the Department of Defense.

### § 1201.102 Functions.

In order to carry out the purpose of the Act, NASA is authorized to conduct research for the solution of problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate a space transportation system including the space shuttle, upper stages, space program, space station, and related equipment; and to perform such other activities as may be required for the exploration of space. The term *aeronautical and space vehicles* means aircraft, missiles, satellites, and other space vehicles, together with related equipment, devices, components, and parts. It conducts activities required for the exploration of space with manned and unmanned vehicles and arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes.

### § 1201.103 Administration.

(a) NASA is headed by an Administrator, who is appointed from civilian life by the President by and with the advice and consent of the Senate. The Administrator is responsible, under the supervision and direction of the President, for exercising all powers and discharging all duties of NASA.

(b) The Deputy Administrator of NASA is also appointed by the President from civilian life by and with the advice and consent of the Senate. The Deputy Administrator acts with or for the Administrator within the full scope of the Administrator's responsibilities. In the Administrator's absence, the Deputy Administrator serves as Acting Administrator.

## Subpart 2—Organization

### § 1201.200 General.

(a) NASA's basic organization consists of the Headquarters, eight field installations, the Jet Propulsion Laboratory (a Government-owned, contractor-operated facility), and several component installations which report to Directors of Field Installations. Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters

located in Washington, DC. NASA Headquarters is comprised of:

(1) The Office of the Administrator which includes the Administrator, Deputy Administrator, Associate Deputy Administrator, Assistant Deputy Administrator, and the Executive Officer.

(2) Four Program Offices which are responsible for planning, direction, and management of agencywide research and development programs. Officials-in-Charge of these Program Offices report directly to the Administrator and they consist of:

(i) The Office of Aeronautics, Exploration and Technology which is responsible for conducting programs to develop advanced technology to enable and enhance an aggressive pursuit of national objectives in aeronautics, space, and transatmospherics, including the National Aero-Space Plane Program; to demonstrate the feasibility of this advanced technology in ground, flight, and in-space facilities to ensure its early utilization; and to ensure the application of agency capabilities and facilities to programs of other agencies and the United States aerospace industry. The Office is the focal point for the Space Exploration Initiative, a long-term program of robotic and human exploration which will include sending humans to the Moon early in the 21st century to establish a permanent outpost, and then conducting human missions to the planet Mars. In addition, the Office is responsible for managing the Ames, Langley, and Lewis Research Centers.

(ii) The Office of Space Science and Applications is responsible for efforts to understand the origin, evolution, and structure of the universe, the solar system, and the integrated functioning of the Earth. The Office conducts space application activities, such as remote sensing of the Earth, developing and understanding microgravity processes, and developing and testing advanced space communications as well as basic and applied science to facilitate life in space. The Office also is responsible for managing the Goddard Space Flight Center and the Jet Propulsion Laboratory and maintaining contacts with the Space Science Board of the National Academy of Sciences, the Space Applications Board, and other science advisory boards and committees. The Office coordinates its program with various government agencies, foreign interests, and the private sector. Its objectives are accomplished through research and development in astrophysics, life sciences, Earth sciences and applications, solar system exploration, space physics, communications, microgravity science and applications, and communications and information systems. The Office also utilizes the space shuttle, expendable launch vehicles, automated spacecraft, human-occupied spacecraft, sounding rockets, balloons, aircraft, and ground-based research to conduct its programs.

(iii) The Office of Space Flight is responsible for advancing the space shuttle, for developing Freedom, a permanently manned space station, and for carrying out space transportation and other associated programs, including the management of the Johnson Space Center, Marshall Space Flight Center, Kennedy Space Center, and John C. Stennis Space Center. The Office plans, directs, and executes the development, acquisition, testing, and operations of all elements of the Space Transportation System; plans, directs, and manages execution of prelaunch, launch, flight, landing, postflight operations, and payload assignments; maintains and upgrades the design of ground and flight systems throughout the operational period; procures recurring system hardware; manages all U.S. Government civil launch capabilities and spacelab development, procurement, and operations; develops and implements necessary policy with other government and commercial users of the Space Transportation System; and coordinates all research. The Office is also responsible for managing and directing all aspects of the Space Station Freedom Program and achieving the goals established by the President. These goals include developing a permanently manned space station in the mid-1990's and involving other countries in the program, and promoting scientific research, technology development, and private-sector investment in space. The Johnson Space Center, the Marshall Space Flight Center, the Goddard Space Flight Center, and the Lewis Research Center are responsible

for developing major elements of the space station. The concept of the Space Station Freedom Program is to provide a manned base, initially accommodating a crew of eight people.

(iv) The Office of Space Operations is responsible for an array of functions critical to operations of this Nation's space programs. They include spacecraft operations and control centers; ground and space communications; data acquisition and processing; flight dynamics and trajectory analyses; spacecraft tracking; and applied research and development of new technology. The Space Transportation System, Tracking and Data Relay Satellite System, Deep Space Network, Spaceflight Tracking and Data Network, and various other facilities currently provide the requirements for NASA's space missions. A global communications system links tracking sites, control centers, and data processing facilities that provide real-time data processing for mission control, orbit, and attitude determination, and routine processing of telemetry data for space missions.

(3) Thirteen Headquarters Offices which provide agencywide leadership in management and administrative processes. Officials-in-Charge of these offices report to the Administrator.

(b) Directors of NASA Field Installations and other component installations are responsible for execution of NASA's programs, largely through contracts with research, development, and manufacturing enterprises. A broad range of research and development activities are conducted at NASA field installations and other component installations by Government-employed scientists, engineers, and technicians to evaluate new concepts and phenomena and to maintain the capability required to manage contracts with private enterprises. Although these field installations have a primary program responsibility to the program office to which they report, they also conduct work for the other program offices.

(c) The NASA field installations and a brief description of their responsibilities are as follows:

(1) *Ames Research Center, Moffett Field, CA 94035.* The Center manages a diverse program of research and development in support of the Nation's aerospace program and maintains unique research and test facilities including wind tunnels, simulators, supercomputers, and flight test ranges. Current areas of emphasis include the development of aerospace vehicle concepts through synergistic application of the Center's complete capabilities, ranging from computation and experimentation (in wind tunnels and simulators) to flight testing; research in support of human adaptation and productivity in the microgravity environment; and research and development of human/machine interfaces and levels of automation to optimize the operation of future aerospace systems, as well as future hypersonic vehicles and probes. Specifically, the Center's major program responsibilities are concentrated in computational and experimental fluid dynamics and aerodynamics; fluid and thermal physics; rotorcraft, powered-lift, and high-performance aircraft technology; flight simulation and research; controls and guidance; aerospace human factors; automation sciences, space and life sciences; airborne sciences and applications; space biology and medicine; and ground and flight projects in support of aeronautics and space technology. In addition to these major program responsibilities, the Center provides support for military programs and major agency projects such as the Space Transportation System, Space Station, and the National Aero-Space Plane.

(2) *Goddard Space Flight Center, Greenbelt, MD 20771.* The Center conducts Earth-orbital spacecraft and experiment development flight operations. It develops and operates tracking and data acquisition systems and conducts supporting mission operations. It also develops and operates spacelab payloads; space physics research program; Earth science and applications programs; life science programs; information systems technology; sounding rockets and sounding rocket payloads; launch vehicles; balloons and balloon experiments; planetary science experiments; and sensors for environmental monitoring and ocean dynamics.

(3) *John F. Kennedy Space Center, Kennedy Space Center, FL 32899.* The Center designs, constructs, operates, and

maintains space vehicle facilities and ground support equipment for launch and recovery operations. The Center is also responsible for prelaunch operations, launch operations, and payload processing for the space shuttle and expendable launch vehicle programs, and landing operations for the space shuttle orbiter; also recovery and refurbishment of the reusable solid rocket booster.

(4) *Langley Research Center, Hampton, VA 23665.* The Center performs research in long-haul aircraft technology; general aviation commuter aircraft technology; military aircraft and missile technology; National Aero-Space Plane; fundamental aerodynamics; computational fluid dynamics; propulsion/airframe integration; unsteady aerodynamics and aeroelasticity; hypersonic propulsion; aerospace acoustics; aerospace vehicle structures and materials; computational structural mechanics; space structures and dynamics; controls/structures interaction; aeroservoelasticity; interdisciplinary research; aerothermodynamics; aircraft flight management and operating procedures; advanced displays; computer science; electromagnetics; automation and robotics; reliable, fault-tolerant systems and software; aircraft flight control systems; advanced space vehicle configurations; advanced space station development; technology experiments in space; remote sensor and data acquisition and communication technology; space electronics and control systems; planetary entry technology; nondestructive evaluation and measurements technology; atmospheric sciences; Earth radiation budget; atmospheric dynamics; space power conversion and transmission; space environmental effects; and systems analysis of advanced aerospace vehicles.

(5) *Lewis Research Center, Cleveland, OH 44135.* The Center manages the design and development of the power generation, storage, and distribution system for Space Station Freedom. The Center is also responsible for conducting research and technology activities in the following areas: airbreathing propulsion systems, including those needed for the National Aero-Space Plane; turbomachinery thermodynamics and aerodynamics; fuel and combustion; aero and space propulsion systems; space power; power transmission; tribology; internal engine computational fluid dynamics; materials; structural analysis; instrumentation; space communications, including design and development of the Advanced Communications Technology Satellite (ACTS); the ACTS experiments program; design, development, and fabrication of microgravity space experiments; and the procurement of intermediate and large-class expendable launch vehicle launch services. The Center also plays an important role in planning the Space Exploration Initiative and in implementing the Exploration Technology Program. In addition, the Center provides research and technology support to the Department of Defense and assists the private sector in identifying potential industrial applications and commercialization of NASA-developed technology.

(6) *Lyndon B. Johnson Space Center, Houston, TX 77058.* The Center manages the development and operation of the space shuttle, a manned space transportation system developed for the United States by NASA. The shuttle is designed to reduce the cost of using space for commercial, scientific, and defense needs. The Center is responsible for development, production, delivery, and flight operation of the orbiter vehicle, that portion of the space shuttle that is designed to take crew and experiments into space, place satellites in orbit, retrieve ailing satellites, etc. The shuttle crew (up to seven people) includes pilots, mission specialists, and payload specialists. Crew personnel (other than payload specialists) are recruited, selected, and trained by the Center. It is also responsible for design, development, and testing of spaceflight payloads and associated systems for manned flight; for planning and conducting manned spaceflight missions; and for directing medical, engineering, and scientific experiments that are helping us understand and improve the environment. For the space station program, the Center provides support in the areas of headquarters level A responsibilities and project management.

(7) *George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.* The Center manages, develops, and tests the External Tank, Solid Rocket Booster, and main engines, which are major portions of the space shuttle project; oversees the development of the U.S. Spacelab; manages the space telescope; and conducts research in structural systems, materials science engineering, electronics, guidance, navigation, and control.

(8) *John C. Stennis Space Center, Stennis Space Center, MS 39529.* The Center plans and manages research and development activities in the field of space and terrestrial applications; space flight; research in oceanography, meteorology, and environmental sciences. The Center coordinates research between the Administration and other government agencies.

(d) The NASA Office of Inspector General is established pursuant to Act of Congress, Public Law 95–452, as amended, 5 U.S.C. App. III. The Inspector General is appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General appoints an Assistant Inspector General for Auditing, who is responsible for supervising the performance of auditing activities relating to NASA's programs and operations, and an Assistant Inspector General for Investigations, who is responsible for supervising the performance of NASA's investigative activities. It is the duty and responsibility of the Inspector General to provide policy direction, to conduct, supervise and coordinate audits and investigations related to NASA's programs and operations in order to promote economy and efficiency, and to prevent and detect fraud and abuse in these programs and operations. The Inspector General must report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. The Inspector General is responsible for keeping the Administrator and Congress fully and currently informed, by reports concerning fraud and other serious problems, abuses, and deficiencies related to NASA's programs and operations, for recommending corrective actions, and for reporting on the progress in implementing such corrective actions. The Inspector General reports to the Administrator, but neither the Administrator nor the Deputy Administrator can prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena under authority of the Inspector General Act. In carrying out the responsibilities, the Inspector General shall comply with standards established by the Comptroller General of the United States for audits of governmental organizations, programs, activities, and functions. The Inspector General reports to Congress on a semiannual basis, summarizing the activities of the office. These reports are available to the public upon request within 60 days of their transmission to the Congress. Anyone wishing to report instances of fraud, waste, or mismanagement in NASA's programs and operations can call the Inspector General Hotline at 755–3402 in the Washington, DC, area or toll free (800) 424–9183 for all other areas. The office maintains a 24-hour answering service. Identities of complainants can be kept confidential. Written complaints can be sent to the NASA Inspector General, P.O. Box 23089, L'Enfant Plaza Station, Washington, DC 20026.

(e) For more detailed description of NASA's organizational structure, see the ''U.S. Government Manual.''

## Subpart 3—Boards and Committees

### §1201.300 Boards and committees.

Various boards and committees have been established as part of the permanent organization structure of NASA. These include:

(a) *Board of Contract Appeals.* (1) The Board is established in accordance with the Contract Disputes Act of 1978 (41 U.S.C. 601–613). The function of the Board is to decide appeals from decisions of contracting officers relating to a contract made by NASA.

(2) The charter of the Board is set forth in subpart 1 of part 1209 of this chapter. The Board's rules of procedure are set forth in 14 CFR part 1241.

(3) The texts of decisions of the Board are published by Commerce Clearing House, Inc., in Board of Contract Appeals Decisions, and are hereby incorporated by reference. All decisions and orders are available for inspection and for purchase from the Recorder of the Board of NASA Headquarters, Washington, DC. Decisions and orders issued after July, 1967, area available for inspection and for purchase at NASA Information Centers.

(b) *Contract Adjustment Board.* (1) The function of the Board is to consider and dispose of requests by NASA contractors for extraordinary contractual adjustments pursuant to Public Law 85–804 (50 U.S.C. 1431–35) and Executive Order 10789 dated November 14, 1958 (23 FR 8397).

(2) The charter of the Board is set forth at subpart 3 of part 1209 of this chapter. The Board's rules of procedure are set forth at 48 CFR part 1850.

(3) Indexes of and texts of decisions of the Board are available for inspection and for purchase from the Chairperson of the Board, National Aeronautics and Space Administration, Washington, DC 20546, and from the NASA Information Centers.

(c) *Inventions and Contributions Board.* (1) The function of the Board is to consider and recommend to the Administrator the action to be taken with respect to:

(i) Petitions for waiver of rights to any invention or class of inventions made during the performance of NASA contracts; and

(ii) Applications for award for scientific and technical contributions determined to have significant value in the conduct of aeronautical and space activities, pursuant to the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457 (f) and (g), 2458), and the Government Employees Incentive Awards Act (5 U.S.C. 2121–23), respectively.

(2) The charter of the Board is set forth at subpart 4 of part 1209 of this chapter. The Board's rules of procedure are set forth at 14 CFR parts 1240 and 1245.

(3) The decisions of the Board on requests for waiver are available for inspection at NASA Headquarters, Office of Inventions and Contributions Board.

## Subpart 4—General Information

### § 1201.400 NASA procurement program.

(a) The Office of Procurement, headed by the Assistant Administrator for Procurement, serves as a central point of control and contact for NASA procurements. Although the procurements may be made by the field installations, selected contracts and contracts of special types are required to be approved by the Assistant Administrator for Procurement prior to their execution. The Office of Procurement is also responsible for formulation of NASA procurement policies and provides overall assistance and guidance to NASA field installations to achieve uniformity in NASA procurement processes.

(b) The NASA procurement program is carried out principally at the NASA field installations listed in subpart 2 of this part and in the ''U.S. Government Manual.'' The Headquarters Acquisition Division is responsible for contracts with foreign governments and foreign commercial organizations, the procurement of materials and services required by Headquarters offices except for minor office supplies and services procured locally, and the award of grants and cooperative agreements for Headquarters. The Headquarters Space Station Freedom Procurement Office is responsible for managing and directing the full range of acquisition functions in support of the Space Station Freedom Program Office.

(c) All procurements are made in accordance with the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) and the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) (48 CFR chapter 18). Copies of these publications are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on an annual subscription basis.

**§ 1201.401 Special document depositories.**

NASA provides the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, with copies of NASA and/or NASA-sponsored unclassified unlimited documents to provide availability to the public. These documents may be reproduced by NTIS and sold at prices established by NTIS. NASA also uses the regional depository libraries established through the Federal Depository Library Program by chapter 19 of title 44 of the U.S. Code under the Government Printing Office (GPO) to make its technical documents and bibliographic tools available to the general public. These depository libraries are responsible for permanent retention of material, interlibrary loan, and reference services.

**§ 1201.402 NASA Industrial Applications Centers.**

(a) As part of its Technology Utilization Program—a program designed to transfer new aerospace knowledge and innovative technology to nonaerospace sectors of the economy—NASA operates a network of Industrial Applications Centers. These centers serve U.S. industrial clients on a fee paying basis by providing access to literally millions of scientific and technical documents published by NASA and by other research and development organizations. Using computers, the NASA Industrial Applications Centers conduct retrospective and current awareness searches of available literature in accordance with client interests, and assist in the interpretation and adaption of retrieved information to specified needs. Such services may be obtained by contacting one of the following:

(1) Aerospace Research Applications Center (ARAC), Indianapolis Center for Advanced Research, 611 N. Capital Avenue, Indianapolis, IN 46204.

(2) Southern Technology Applications Center, Progress Center, Box 24, 1 Progress Boulevard, Alachua, FL 32615.

(3) NASA/UK Technology Applications Program, University of Kentucky, 10 Kinkead Hall, Lexington, KY 40506–0057.

(4) NASA Industrial Applications Center, 823 William Pitt Union, University of Pittsburgh, Pittsburgh, PA 15260.

(5) New England Research Application Center (NERAC), One Technology Drive, Tolland, CT 06084.

(6) North Carolina Science and Technology Research Center, P.O. Box 12235, Research Triangle Park, NC 27709.

(7) Technology Application Center (TAC), University of New Mexico, Albuquerque, NM 87131.

(8) Kerr Industrial Applications Center, Southeastern Oklahoma State University, Station A, Box 2584, Durant, OK 74701.

(9) NASA Industrial Applications Center, Research Annex, Room 200, University of Southern California, 3716 South Hope Street, Los Angeles, CA 90007.

(10) NASA/SU Industrial Applications Center, Southern University, Department of Computer Science, Baton Rouge, LA 70813–2065.

(b) To obtain access to NASA-developed computer software, contact: Computer Software Management and Information Center (COSMIC), University of Georgia, Athens, GA 30602.

# PART 1203—INFORMATION SECURITY PROGRAM

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AUTHORITY: 42 U.S.C. 2451 *et seq.* and E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

SOURCE: 44 FR 34913, June 18, 1979, unless otherwise noted.

## Subpart A—Scope

### § 1203.100 Legal basis.

(a) *Executive Order 12356 (hereinafter referred to as ''the Order'')*. The responsibilities and authority of the Administrator of NASA with respect to the original classification of official information or material requiring protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States (hereinafter collectively termed ''national security''), and the standards for such classification, are established by the ''the Order'' (47 FR 14874) and the Information Security Oversight Office Directive No. 1, June 25, 1982;

(b) *E.O. 10865*. Executive Order 10865 (24 FR 1583) requires the Administrator to prescribe by regulation such specific requirements, restrictions and other safeguards as the Administrator may consider necessary to protect:

(1) Releases of classified information to or within United States industry that relate to contracts with NASA; and

(2) Other releases of classified information to industry that NASA has responsibility for safeguarding.

(c) *The National Aeronautics and Space Act*. (1) Section 304(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.), states in part: ''The Administrator shall establish such security requirements, restrictions, and safeguards as he deems necessary in the interest of the national security * * *''

(2) Section 303 of the Act states: ''Information obtained or developed by the Administrator in the performance of his functions under this Act shall be made available for public inspection, except (i) information authorized or required by Federal statute to be withheld, and (ii) information classified to protect the national security: *Provided*, That nothing in this Act shall authorize the withholding of information by the Administrator from the duly authorized committees of the Congress.''

[44 FR 34913, June 18, 1979, as amended at 48 FR 5889, Feb. 9, 1983]

### §1203.101 Other applicable NASA regulations.

(a) Subpart H of this part, ''Delegation of Authority to Make Determinations in Original Security Classification Matters.''

(b) Subpart I of this part, ''NASA Information Security Program Committee.''

(c) NASA Handbook 1620.3, ''NASA Physical Security Handbook.''

## Subpart B—NASA Information Security Program

### §1203.200 Background and discussion.

(a) In establishing a civilian space program, the Congress required NASA to ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof,'' and for the withholding from public inspection of that information that is classified to protect the national security.

(b) In recognition of the essential requirement for an informed public concerning the activities of its Government, as well as the need to protect certain national security information from unauthorized disclosure, ''the Order'' was promulgated. It designates the National Aeronautics and Space Administration certain responsibility for matters pertaining to national security and confers on the Administrator of NASA, or such responsible officers or employees as the Administrator may designate, the authority for original classification of official information or material which requires protection in the interest of national security. It also provides for:

(1) Basic classification, downgrading and declassification guidelines;

(2) The issuance of directives prescribing the procedures to be followed in safeguarding classified information or material;

(3) A monitoring system to ensure the effectiveness of the Order;

(4) Appropriate administrative sanctions against officers and employees of the United States Government who are found to be in violation of the Order or implementing directive; and

(5) Classification limitations and restrictions as discussed in §§1203.410 and 1203.411.

(c) ''The Order'' requires the timely identification and protection of that NASA information the disclosure of which would be contrary to the best interest of national security. Accordingly, the determination in each case must be based on a judgment as to whether disclosure of information could reasonably be expected to result in damage to the national security.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5889, Feb. 9, 1983]

### §1203.201 Information security objectives.

The objectives of the NASA Information Security Program are to:

(a) Ensure that information is classified only when a sound basis exists for such classification and only for such period as is necessary.

(b) Prevent both the unwarranted classification and the overclassification of NASA information.

(c) Ensure the greatest practicable uniformity within NASA in the classification of information.

(d) Ensure effective coordination and reasonable uniformity with other Government departments and agencies, particularly in areas where there is an interchange of information, techniques or hardware.

(e) Provide a timely and effective means for downgrading or declassifying information when the circumstances necessitating the original classification change or no longer exist.

### §1203.202 Responsibilities.

(a) The Chairperson, NASA Information Security Program Committee (Subpart I of this part), is responsible for:

(1) Directing the NASA Information Security Program in accordance with NASA policies and objectives and applicable laws and regulations.

(2) Ensuring effective compliance with and implementation of ''the Order'' and the Information Security Oversight Office Directive No. 1 relating to security classification matters.

(3) Reviewing, in consultation with the NASA Information Security Program Committee, questions, suggestions, appeals and compliance concerning the NASA Information Security Program and making determinations concerning them.

(4) Coordinating NASA security classification matters with NASA installations, the Department of Defense, the Department of Energy and other Government agencies.

(5) Issuing Security Classification Guides for NASA programs and projects.

(6) Developing, maintaining and recommending to the Administrator guidelines for the systematic review covering 30-year-old classified information under NASA's jurisdiction.

(7) Reviewing and coordinating with appropriate offices all appeals of denials of requests for records under sections 552 and 552a of Title 5, United States Code (Freedom of Information and Privacy Acts) when the denials are based on the records continued classification.

(8) Recommending to the Administrator appropriate administrative action to correct abuse or violations of any provision of the NASA Information Security Program, including notifications by warning letter, formal reprimand and to the extent permitted by law, suspension without pay and removal.

(b) All NASA employees are responsible for bringing to the attention of the Chairperson of the NASA Information Security Program Committee any information security problems in need of resolution, any areas of interest wherein information security guidance is lacking, and any other matters likely to impede achievement of the objectives prescribed herein.

(c) Each NASA official to whom the authority for original classification is delegated shall be accountable for the propriety of each classification (see subpart H) and is responsible for:

(1) Ensuring that classification determinations are consistent with the policy and objectives prescribed above, and other applicable guidelines.

(2) Bringing to the attention of the Chairperson, NASA Information Security Program Committee, for resolution, any disagreement with classification determinations made by other NASA officials.

(3) Ensuring that information and material which no longer requires its present level of protection is promptly downgraded or declassified in accordance with applicable guidelines.

(d) Other Officials-in-Charge of Headquarters Offices are responsible for:

(1) Ensuring that classified information or material prepared within their respective offices is appropriately marked.

(2) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(e) Directors of Field Installations are responsible for:

(1) Developing proposed Security Classification Guides.

(2) Ensuring that classified information or material prepared in their respective installations is appropriately marked.

(3) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(4) Designating Security Classification Officers at their respective installations, to whom responsibilities listed in paragraphs (e)(1), (2), and (3) of this section may be reassigned.

(f) The Senior Security Specialist, NASA Security Office, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Information Security Program Committee, is responsible for the NASA-wide coordination of security classification matters.

(g) The Chief, Information and Physical Security Branch, NASA Security Office, is responsible for establishing procedures for the safeguarding of classified information of material (e.g., accountability, control, access, storage, transmission, and marking) and for ensuring that such procedures are systematically reviewed; and those which are duplicative or unnecessary are eliminated.

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5890, Feb. 9, 1983; 53 FR 41318, Oct. 21, 1988]

### §1203.203 Degree of protection.

(a) *General.* Upon determination that information or material must be classified, the degree of protection commensurate with the sensitivity of the information must be determined. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within 30 days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within 30 days.

(b) *Authorized categories of classification.* The three categories of classification, as authorized and defined in ''the Order,'' are set out below. No other restrictive markings are authorized to be placed on NASA classified documents or materials except as expressly provided by statute or by NASA Directives.

(1) *Top Secret.* Top Secret is the designation applied to information or material the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret.* Secret is the designation applied to information or material the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(3) *Confidential.* Confidential is the designation applied to that information or material for which the unauthorized disclosure could reasonably be expected to cause damage to the national security.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

## Subpart C—Classification Principles and Considerations

### §1203.300 General.

In general, the types of NASA-generated information and material requiring protection in the interest of national security lie in the areas of applied research, technology or operations.

### §1203.301 Identification of information requiring protection.

Classifiers shall identify the level of classification of each classified portion of a document (including subject and titles), and those portions that are not classified.

### §1203.302 Combination, interrelation or compilation.

An interrelationship of individual items, classified or unclassified, may result in a combined item requiring a higher classification than that of any of the individual items. Compilations of unclassified information are considered unclassified unless some additional significant factor is added in the process of compilation. For example:

(a) The way unclassified information is compiled may be classified;

(b) The fact that the information is complete for its intended purpose may be classified; or

(c) The fact the compilation represents an official evaluation may be classified. In these cases, the compilations would be classified.

### §1203.303 Dissemination considerations.

The degree of intended dissemination, use of the information and whether the end purpose to be served renders effective security control impractical

are considerations during the classification process. These factors do not necessarily preclude classification, but must be considered in order not to impose security controls which are impractical to enforce.

### § 1203.304 Internal effect.

The effect of security protection on program progess and cost and on other functional activities of NASA should be considered. Impeditive effects and added costs inherent in a security classification must be assessed in light of the detrimental effects on the national security interests which would result from failure to classify.

### § 1203.305 Restricted data.

Restricted Data or Formerly Restricted Data is so classified when originated, as required by the Atomic Energy Act of 1954, as amended. Specific guidance for the classification of Restricted Data is provided in ''Classification Guides'' published by the Department of Energy.

## Subpart D—Guides for Original Classification

### § 1203.400 Specific classifying guidance.

Technological and operational information and material, and in some exceptional cases scientific information falling within any one or more of the following categories, must be classified if its unauthorized disclosure could reasonably be expected to cause damage to the national security. In cases where it is believed that a contrary course of action would better serve the national interests, the matter should be referred to the Chairperson, NASA Information Security Program Committee, for a determination. It is not intended that this list be exclusive; original classifiers are responsible for initially classifying any other type of information which, in their judgment, requires protection under ''the Order.''

(a) Information which provides the United States, in comparison with other nations, with a significant scientific, engineering, technical, operational, intelligence, strategic, tactical or economic advantage related to national security.

(b) Information which, if disclosed, would significantly diminish the technological lead of the United States in any military system, subsystem or component, and would result in damage to such a system, subsystem or component.

(c) Scientific or technological information in an area where an advanced military application that would in itself be classified is foreseen during exploratory development.

(d) Information which, if known, would:

(1) Provide a foreign nation with an insight into the defense application or the war or defense plans or posture of the United States;

(2) Allow a foreign nation to develop, improve or refine a similar item of defense application;

(3) Provide a foreign nation with a base upon which to develop effective countermeasures;

(4) Weaken or nullify the effectiveness of a defense or military plan, operation, project, weapon system or activity which is vital to the national security.

(e) Information or material which is important to the national security of the United States in relation to other nations when there is sound reason to believe that those nations are unaware that the United States has or is capable of obtaining the information or material; i.e., through intelligence activities, sources, or methods.

(f) Information which if disclosed could be exploited in a manner prejudicial to the national security posture of the United States by discrediting its technological power, capability or intentions.

(g) Information which reveals an unusually significant scientific or technological ''breakthrough'' which there is sound reason to believe is not known to or within the state-of-the-art capability of other nations. If the ''breakthrough'' supplies the United States with an important advantage of a technological nature, classification also would be appropriate if the potential application of the information, although not specifically visualized, would afford the United States a significant national security advantage in terms of technological lead time or an

economic advantage relating to national security.

(h) Information of such nature that an unfriendly government in possession of it would be expected to use it for purposes prejudicial to U.S. national security and which, if classified, could not be obtained by an unfriendly power without a considerable expenditure of resources.

(i) Information which if disclosed to a foreign government would enhance its military research and development programs to the detriment of U.S. counterpart or competitive programs.

(j) Operational information pertaining to the command and control of space vehicles, the possession of which would facilitate malicious interference with any U.S. space mission, that might result in damage to the national security.

(k) Information which if disclosed could jeopardize the foreign relations or activities of the United States; for example, the premature or unauthorized release of information relating to the subject matter of international negotiations, foreign government information or information regarding the placement or withdrawal of NASA tracking stations on foreign territory.

(l) United States Government programs for safeguarding nuclear materials or facilities.

(m) Other categories of information which are related to national security and which require protection against unauthorized disclosure as may be determined by the Administrator. The Chairperson, NASA Information Security Program Committee, will promptly inform the Director, Information Security Oversight Office, General Services Administration (GSA) of such determinations.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

### §1203.401 Effect of open publication.

Public disclosure, regardless of source or form, of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosure requires an immediate reevaluation to determine whether the information has been compromised to the extent that downgrading or declassification is indicated. Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. In these cases, if a release were made or authorized by an official Government source, classification of clearly identified items may no longer be warranted. Questions as to the propriety of continued classification should be referred to the Chairperson, NASA Information Security Program Committee.

### §1203.402 Classifying material other than documentation.

Items of equipment or other physical objects may be classified only where classified information may be derived by visual observation of internal or external appearance, structure, operation, test, application or use. The overall classification assigned to equipment or objects shall be at least as high as the highest classification of any of the items of information which may be revealed by the equipment or objects, but may be higher if the classifying authority determines that the sum of classified or unclassified information warrants such higher classification. In every instance where classification of an item of equipment or object is determined to be warranted, such determination must be based on a finding that there is at least one aspect of the item or object which requires protection. If mere knowledge of the existence of the equipment or object would compromise or nullify the reason or justification for its classification, the fact of its existence should be classified.

### §1203.403 State-of-the-art and intelligence.

A logical approach to classification requires consideration of the extent to which the same or similar information available from intelligence sources is known or is available to others. It is also important to consider whether it is known publicly, either domestically or internationally, that the United States has the information or even is interested in the subject matter. The known state-of-the-art in other nations

is an additional substantive factor requiring consideration.

### § 1203.404 Handling of unprocessed data.

It is the usual practice to withhold the release of raw scientific data received from spacecraft until it can be calibrated, correlated and properly interpreted by the experimenter under the monitorship of the cognizant NASA office. During this process, the data are withheld through administrative measures, and it is not necessary to resort to security classification to prevent premature release. However, if at any time during the processing of raw data it becomes apparent that the results require protection under the criteria set forth in this subpart D, it is the responsibility of the cognizant NASA office to obtain the appropriate security classification.

### § 1203.405 Proprietary information.

Proprietary information made available to NASA is subject to examination for classification purposes under the criteria set forth in this subpart D. Where the information is in the form of a proposal and accepted by NASA for support, it should be categorized in accordance with the criteria of § 1203.400. If NASA does not support the proposal but believes that security classification would be appropriate under the criteria of § 1203.400 if it were under Government jurisdiction, the contractor should be advised of the reasons why safeguarding would be appropriate, unless security considerations preclude release of the explanation to the contractor. NASA should identify the Government department, agency or activity whose national security interests might be involved and the contractor should be instructed to protect the proposal as though classified pending further advisory classification opinion by the Government activity whose interests are involved. If such a Government activity cannot be identified, the contractor should be advised that the proposal is not under NASA jurisdiction for classification purposes, and that the information should be sent, under proper safeguards, to the Director, Information Security Oversight Office, General Services Administration, Washington, DC 20405, for a determination.

### § 1203.406 Additional classification factors.

In determining the appropriate classification category, the following additional factors should be considered:

(a) *Uniformity within government activities.* The effect classification will have on technological programs of other Government departments and agencies should be considered. Classification of official information must be reasonably uniform within the Government.

(b) *Applicability of classification directives of other Government agencies.* It is necessary to determine whether authoritative classification guidance exists elsewhere for the information under consideration which would make it necessary to assign a higher classification than that indicated by the applicable NASA guidance. Generally, the classification by NASA should not be higher than that of equivalent information in other departments or agencies of the Government.

### § 1203.407 Duration of classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of the ''the Order.''

[48 FR 5890, Feb. 9, 1983]

### § 1203.408 Assistance by installation security classification officers.

Installation Security Classification Officers, as the installation point-of-contact, will assist installation personnel in:

(a) Interpreting security classification guides and classification assignments for the installation.

(b) Answering questions and considering suggestions concerning security classification matters.

(c) Ensuring a continuing review of classified information for the purpose of declassifying or downgrading in accordance with subpart E of this part.

(d) Reviewing and approving, as the representative of the contracting officer, the DD Form 254, Contract Security Classification Specification, issued to contractors by the installation.

**§1203.409 Exceptional cases.**

(a) In those cases where a person not authorized to classify information orginates or develops information which is believed to require classification, that person should safeguard the material as though it were classified until it has been evaluated and a decision made by an appropriate classifying authority. For NASA employees the classifying authority is normally the Installation Security Classification Officer. Persons other than NASA employees should forward, under appropriate safeguards, material in which NASA has primary interest to the NASA Information Security Program Committee, Security Division, Washington, DC 20546 for a classification determination.

(b) Information in which NASA does not have primary interest shall be returned promptly, under appropriate safeguards, to the sender in accordance with §1203.405.

(c) Material received from another agency for a NASA security classification determination shall be processed within 30 days. If a classification cannot be determined during that period, the material shall be sent, under appropriate safeguards, to the Director, Information Security Oversight Office, GSA, for a determination.

**§1203.410 Limitations.**

(a) Classification may not be used to conceal violations of law, inefficiency of administrative error; to prevent embarrassment to a person, organization or agency; or to restrain competition.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this part 1203 until and unless the Government acquires a proprietary interest in the product. This part does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181–188).

(d) References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

(e) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of this part or to prevent or delay the public release of such information.

(f) Information may be classified or reclassified after receipt of a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of ''the Order'' if such classification meets the requirements of ''the Order'' and is accomplished personally on a document-by-document basis by an official with original Top Secret classification authority.

(g) The Administrator, the Chairperson, NASA Information Security Program Committee, or an official with original Top Secret classification authority may reclassify information previously declassified and disclosed if it is determined in writing that (1) The information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office, GSA.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

**§1203.411 Restrictions.**

(a) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this section, the Department of Defense shall be considered one agency.

(b) Classified information shall not be disseminated outside the Executive Branch except under conditions that ensure the information will be given

protection equivalent to that afforded within the Executive Branch.

[48 FR 5890, Feb. 9, 1983]

### § 1203.412 Classification guides.

(a) *General.* A classification guide, based upon classification determinations made by appropriate program and classification authorities, shall be issued for each classified system, program or project. Classification guides shall:

(1) Identify the information elements to be protected, using categorization and subcategorization to the extent necessary to ensure that the information involved can be readily and uniformly identified.

(2) State which of the classification designations (i.e., Top Secret, Secret or Confidential) apply to the identified information elements.

(3) State the duration of each specified classification in terms of a period of time or future event. Whenever a specific time or future event for declassification cannot be predetermined, the following notation will be used: DECLASSIFY ON: Originating Agency's Determination Required or ''OADR.''

(4) Indicate specifically that the designations, time limits, markings and other requirements of ''the Order'' are to be applied to information classified pursuant to the guide.

(5) Be approved personally and in writing by an official with original Top Secret classification authority; the identity of the official will be shown on the guide. Such approval constitutes an original classification decision. Normally, all guides will be approved by the Chairperson, NASA Information Security Program Committee, whose office will maintain a list of all classification guides in current use.

(b) *Review of classification guides.* Classification guides shall be reviewed by the originator for currency and accuracy not less than once every two years. Changes shall be in strict conformance with the provisions of this part 1203 and shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5891, Feb. 9, 1983]

## Subpart E—Derivative Classification

### § 1203.500 Use of derivative classification.

The application of derivative classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized original classifier or in accordance with an authorized classification guide. If a person who applied derivative classification markings believes that the paraphrasing, restating, or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult for a determination with an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade, or declassify the information.

[48 FR 5891, Feb. 9, 1983]

### § 1203.501 Applying derivative classification markings.

Persons who apply derivative classification markings shall:

(a) Observe and respect original classification decisions:

(b) Verify the information's current level of classification so far as practicable before applying the markings; and

(c) Carry forward to newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5891, Feb. 9, 1983]

## Subpart F—Declassification and Downgrading

### § 1203.600 Policy.

Information shall be declassified or downgraded as soon as national security considerations permit. NASA reviews of classified information shall be coordinated with other agencies that have a direct interest in the subject matter. Information that continues to

meet the classification requirements prescribed by §1203.400 despite the passage of time will continue to be protected in accordance with ''the Order.''

[48 FR 5891, Feb. 9, 1983]

### §1203.601 Responsibilities.

Officials authorized original classification authority may declassify or downgrade information that is subject to the final classification jurisdiction of NASA and shall take such action in accordance with the provisions of this subpart F.

### §1203.602 Authorization.

Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position, the originator's successor, a supervisory official of either, or officials delegated such authority in writing by the Administrator or the Chairperson, NASA Information Security Program Committee.

[48 FR 5891, Feb. 9, 1983]

### §1203.603 Systematic review for declassification.

(a) *General.* (1) Except for foreign government information as provided in subpart G of this part, classified information constituting permanently valuable records of the government as defined by 44 U.S.C. 2103, and information in the possession and control of the Administrator of General Services Administration pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes 30 years old.

(2) Systematic review for declassification of classified cryptologic information will be coordinated through the National Security Agency.

(3) Systematic review for declassification of classified information pertaining to intelligence activities (including special activities) or intelligence sources or methods will be coordinated through the Central Intelligence Agency.

(4) The Chairperson, NASA Information Security Program Committee, shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 30-year old U.S. originated information and 30-year old foreign information. Such personnel shall:

(i) Provide guidance and assistance to National Archives and Records Service employees in identifying and separating documents and specific categories of information within documents which are deemed to require continued classification; and

(ii) Develop reports of information or document categories so separated, with recommendations concerning continued classification.

(b) *Systematic review guidelines.* The Chairperson, NASA Information Security Program Committee, shall develop, in coordination with NASA organizational elements, guidelines for the systematic review for declassification of 30-year old classified information under NASA's jurisdiction. (See subpart G of this part, Foreign Government Information.) The guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond 30 years is needed. These guidelines are authorized for use by the Archivist of the United States and, with the approval of the Administrator, by an agency having custody of the information covered by the guidelines. All information, except foreign government information, cryptologic information, and information pertaining to intelligence sources or methods, not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically at the end of 30 years from the date of original classification. These guidelines shall be reviewed at least every 5 years and revised as necessary unless an earlier review for revision is requested by the Archivist of the United States. Copies of the declassification guidelines promulgated by NASA will be provided to the Information Security Oversight Office, GSA.

(c) *Systematic review procedures.* (1) All security classified records 30 years old or older, whether held in storage areas under installation control or in Federal Records Centers, will be surveyed to

identify those that require scheduling for future disposition.

(2) All NASA information or material in the custody of the National Archives and Records Service that is permanently valuable and more than 30 years old is to be systematically reviewed for declassification by the Archivist of the United States with the assistance of the personnel designated for the purpose pursuant to paragraph (a)(4)(i) of this section. The Archivist shall refer to NASA that information or material which NASA has indicated requires further review. In the case of 30-year old information or material in the custody of NASA installations, such review will be accomplished by the custodians of the information or material. The installation having primary jurisdication over the information or material received from the Archivist or in its custody, shall proceed as follows:

(i) Classified information or material over which NASA exercises exclusive or final original classification authority and which is to be declassified in accordance with the systematic review guidelines developed under paragraph (b) of this section shall be so marked.

(ii) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines developed under paragraph (b) of this section, is to be kept protected, shall be listed by category by the responsible custodian and referred to the Chairperson, NASA Information Security Program Committee. This listing shall:

(A) Identify the information or material involved.

(B) Recommend classification beyond 30 years to a specific event scheduled to happen or a specific period of time or, the alternative, recommend: DECLASSIFY ON: Originating Agency's Determination Required or ''OADR.''

(iii) The Administrator shall consider and determine which category shall be kept classified and the dates or event for declassification. Whenever a specific time or future event for declassification cannot be predetermined, the following notation will be applied: DECLASSIFY ON: Originating Agency's Determination Required or ''OADR.'' The Archivist of the United States will be notified in writing of this decision.

(d) *Declassification by the Director of the Information Security Oversight Office, GSA.* If the Director of the Information Security Oversight Office, GSA, determines that NASA information is classified in violation of ''the Order,'' the Director may require the information to be declassified. Any such decision by the Director may be appealed through the NASA Information Security Program Committee to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

[48 FR 5891, Feb. 9, 1983]

### § 1203.604 Mandatory review for declassification.

(a) *Information covered.* All information classified under ''the Order'' or predecessor orders, except as provided at § 1203.604(b) shall be subject to a review for declassification by the originating agency, if:

(1) The request is made by a United States citizen or permanent resident alien, a Federal agency, or a State or local government; and

(2) The request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. After review, the information or any reasonable segregable portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

(b) *Presidential papers.* (1) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of § 1203.604(a).

(2) The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services Administration or the Archivist pursuant to sections 2107, 2107 note, or 2203 of Title 44, U.S. Code. Review procedures developed by the Archivist shall provide for consultation

with NASA in matters of primary subject interest to NASA.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within NASA shall, in all cases, be submitted directly to the NASA installation which originated the information.

(2) For most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to NASA installations which originated the material, or, if the originating component is not known, the requestor may submit the request to:

(i) The Chairperson, NASA Information Security Program Committee; or the head of the NASA organization most concerned with the subject matter of the material requested; or

(ii) The office designated to receive requests for records specifically citing the Freedom of Information Act pursuant to part 1206 of this chapter.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act shall be processed in accordance with part 1206 of this chapter.

(2) Other requests for declassification review and release of information shall be processed in accordance with the provisions of this section, subject to the following conditions:

(i) The request is in writing and reasonably describes the information sought with sufficient particularity to enable the installation to identify it.

(ii) The requestor shall be asked to correct a request that does not comply with paragraph (d)(2)(i) of this section, to provide additional information or to narrow the scope of the request and shall be notified that no action will be taken until the requestor complies.

(iii) If the request requires the rendering of services for which fees may not be charged under part 1206, but may be charged under 31 U.S.C. 483a (1976), the rates prescribed in §1206.700 shall be used, if appropriate.

(e) *Processing of requests.* Requests that meet the requirements of paragraph (d)(2) of this section will be processed as follows:

(1) NASA installation action upon the initial request shall be completed within 60 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA installation shall determine whether, under the declassification provisions of this part 1203, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement of the reasons for denial, a notice of the right to appeal the determination to the Chairperson, NASA Information Security Program Committee, National Aeronautics and Space Administration, Washington, DC 20546, and a notice that such an appeal must be filed within 60 days in order to be considered.

(3) All appeals of denials of requests for declassification shall be acted upon and determined finally within 30 days after receipt and the requestor shall be advised that the appeal determination is final. If continued classification is required under the provisions of this part 1203, the requestor shall be notified of the reasons thereof.

(4) The declassification and release of foreign government information that is subjected to mandatory review under this section shall be determined only in accordance with §1203.703.

(5) When a NASA installation receives any request for declassification of information in documents in its custody that was classified by another NASA installation or Government agency, it shall refer copies of the request and the requested documents to the originating installation or agency for processing, and may, after consultation with the originating installation or agency, inform the requester of the referral. In cases in which the originating NASA installation determines in writing that a response under §1203.604(f) is indicated, such cases will be promptly forwarded to the Chairperson, NASA Information Security Program Committee, for final resolution and appropriate response.

(f) *Neutral response.* In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of ''the Order,'' NASA shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under ''the Order.''

(g) *Declassification of transferred documents or material*—(1) *Material officially transferred.* In the case of classified information or material transferred by or pursuant to statute or Executive Order to NASA in conjunction with a transfer of functions (not merely for storage purposes) for NASA's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, NASA shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(2) *Material not officially transferred.* When any NASA installation has in its possession classified information or material originated by an agency which has since ceased to exist and that information has not been officially transferred to another department or agency, or when it is impossible for the possessing NASA installation to identify the originating agency, and a review of the material indicates that it should be downgraded or declassified, the possessing NASA installation shall be deemed to be the originating agency for the purpose of declassifying or downgrading such material. If it appears probable that another agency or another NASA organization may have a substantial interest in whether the classification of any particular information should be maintained, the possessing NASA installation shall not exercise the power conferred upon it by this paragraph, until after consultation with any other agency or NASA organization having an interest in the subject matter.

(3) *Transfer for storage or retirement.* (i) Insofar as practicable, classified documents shall be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. Any downgrading or declassification determination shall be indicated on each document by appropriate markings.

(ii) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with ''the Order,'' the directives of the Information Security Oversight Office, GSA, and NASA guidelines.

(h) *Downgrading and declassification actions*—(1) *Notification of changes in classification or declassification.* When classified material has been marked with specific dates or events for downgrading or declassification, it is not necessary to issue notices of such actions to any holders. However, when such actions are taken earlier than originally scheduled, or the duration of classification is shortened, the authority making such changes shall, to the extent practicable, ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom they have transmitted the classified information or material.

(2) *Posted notice.* If prompt remarking of large quantities would be unduly burdensome, the custodian may attach declassification, downgrading, or upgrading notices to the storage unit in lieu of the remarking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items withdrawn from such storage units shall be promptly remarked. However, when information subject to a posted downgrading or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

(i) *Foreign Relations Series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing

20 years after the event, NASA shall assist these editors by facilitating access to appropriate classified materials in its custody and by expediting declassification review of items from its files selected for publication.

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5892, Feb. 9, 1983; 53 FR 41318, Oct. 21, 1988]

## Subpart G—Foreign Government Information

### §1203.700 Identification.

In order to qualify as foreign government information, information must fall into one of the two following categories:

(a) Information provided to the United States by a foreign government or international organization of governments, such as the North Atlantic Treaty Organizatiuon (NATO), where the United States has undertaken an obligation, expressed or implied, to keep the information in confidence. The information is considered to have been provided in confidence if it is marked in a manner indicating it is to be treated in confidence or if the circumstances of the delivery indicate that the information be kept in confidence.

(b) Information requiring confidentiality produced by the United States pursuant to a written, joint arrangement with a foreign government or international organization of governments. A written, joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

### §1203.701 Classification.

(a) Foreign government information that is classified by a foreign entity shall either retain its original classification designation or be marked with a United States classification designation that will ensure a degree of protection equivalent to that required by the entity that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign entity but was provided to NASA with the expressed or implied obligation that it be held in confidence must be classified. ''The Order'' states that unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security. Therefore, such foreign government information shall be classified at least Confidential. However, at the time of classification, judicious consideration shall be given to the sensitivity of the subject matter and the impact of its unauthorized disclosure upon both the United States and the originating foreign government or organization of governments in order to determine the most appropriate level of classification. Levels above Confidential must be assigned by an original classification authority.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5892, Feb. 9, 1983]

### §1203.702 Duration of classification.

Unless the guidelines for the systematic review of 30-year old foreign government information developed pursuant to §1203.603(b) prescribe dates or events for declassification:

(a) Foreign government information shall not be assigned a date or event for declassification unless such is specified or agreed to by the foreign entity.

(b) Foreign government information classified after December 1, 1978, shall be annotated: DECLASSIFY ON: Originating Agency's Determination Required or ''OADR.''

[48 FR 5893, Feb. 9, 1983]

### §1203.703 Declassification.

(a) Information classified in accordance with §1203.400 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

(b) Following consultation with the Archivist of the United States and where appropriate, with the foreign government or international organization concerned and with the assistance of the Department of State, NASA will issue guidelines for the systematic review of 30-year old foreign government

information that will apply to foreign government information of primary concern to NASA. These guidelines are authorized for use by the Archivist of the United States and, with the approval of NASA, by an agency having custody of such information. The Chairperson, NASA Information Security Program Committee, will initiate administrative functions necessary to effect review of these guidelines at least once every 5 years and submit recommendations to the Administrator based on these reviews. If, after applying the guidelines to 30-year old foreign government information, a determination is made by the reviewer that classification is necessary, a date for declassification or DECLASSIFY ON: Originating Agency's Determination Required or ''OADR'' shall be shown on the face of the document.

(c) Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 1203.603 except that foreign government information will be declassified only in accordance with the guidelines developed for that purpose under § 1203.702 and after consultation with other Government agencies with subject matter interest as necessary. In those cases where these guidelines cannot be applied to the foreign government information requested, the foreign originator normally should be consulted, through appropriate channels, prior to final action on the request. However, when the responsible NASA installation knows the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator is not necessary.

(d) Requests for mandatory review for declassification of foreign government information which NASA has not received or classified shall be referred to the Government agency having a primary interest. The requestor shall be advised of the referral.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5893, Feb. 9, 1983]

## Subpart H—Delegation of Authority To Make Determinations in Original Classification Matters.

SOURCE: 62 FR 54380, Oct. 20, 1997, unless otherwise noted.

### § 1203.800 Delegations.

(a) The NASA officials listed in paragraph (b) (1) and (2) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations, and they shall be subject to any contrary determination that has been made by the Senior Agency Official for Classified National Security Information, or by any other NASA official authorized to make such a determination. The Director, Security Management Office, is designated to act as the Senior Agency Official for Classified National Security Information. The NASA officials listed in paragraph (b)(3) of the section are authorized to declassify top Secret security classification assignments over 25 years old to information under their jurisdiction for which NASA has original classification authority. The NASA officials listed in paragraphs (b)(4) of this section are authorized to declassify Secret and Confidential security classification assignments to information under their jurisdiction for which NASA has original classification authority.

(b) *Designated officials*—(1) *TOP SECRET Classification Authority*. (i) Administrator.

(ii) Deputy Administrator.

(iii) Associate Deputy Administrator.

(iv) Associate Deputy Administrator (Technical).

(v) Senior Agency Official for Classified National Security Information.

(2) *SECRET and CONFIDENTIAL Classification Authority*. Officials listed in paragraph (b)(1) of this section.

(3) *Declassification Authority, Top Secret Assignments over 25 years Old*. (i) Agency Security Program Manager, NASA Headquarters.

(ii) Such other officials as may be delegated declassification authority, in writing, by the Senior Agency Official for Classified National Security Information.

(4) *Declassification Authority, Secret and Confidential.* (i) Security Administrative Team Leader, Headquarters NASA.

(ii) Such other officials as may be delegated declassification authority, in writing, by the Senior Agency Official for Classified National Security Information.

(c) Written requests for original classification authority or declassification authority shall be forwarded to the Senior Agency Official for Classified National Security Information, with appropriate justification appended thereto.

(d) The Senior Agency Official for Classified National Security Information shall maintain a list of all delegations of original classification of declassification authority by name or title of the position held.

(e) The Senior Agency Official for Classified National Security Information shall conduct a periodic review of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

### §1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority or declassification authority is not authorized.

### §1203.802 Reporting.

The officials to whom original classification authority has been delegated under this section shall ensure that feedback is provided to the Senior Agency Official for National Security Information. The Senior Agency Official for National Security Information shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

## Subpart I—NASA Information Security Program Committee

SOURCE: 54 FR 6881, Feb. 15, 1989, unless otherwise noted.

### §1203.900 Establishment.

Pursuant to Executive Order 12356, ''National Security Information,'' and the National Aeronautics and Space Act of 1958, as amended, there is established a NASA Information Security Program Committee (hereinafter referred to as the Committee) as part of the permanent administrative structure of NASA. The Director, NASA Security Office, is designated to act as the Chairperson of the Committee. The Senior Security Specialist, Classification Management and Physical Security Section, NASA Security Office, is designated to act as the Committee Executive Secretary.

### §1203.901 Responsibilities.

(a) The Chairperson reports to the Administrator concerning the management and direction of the NASA Information Security Program as provided for in subpart B of this part. In this connection, the Chairperson is supported and advised by the Committee.

(b) The Committee shall act on all appeals from denials of declassification requests and on all suggestions and complaints with respect to administration of the NASA Information Security Program as provided for in subpart B of this part.

(c) The Executive Secretary of the Committee shall maintain all records produced by the Committee, its subcommittees, and its ad hoc panels.

(d) The NASA Security Office, NASA Headquarters, will provide staff assistance, and investigative and support services for the Committee.

### §1203.902 Membership.

The Committee will consist of the Chairperson and Executive Secretary. In addition, each of the following NASA officials will nominate one person to Committee membership:

(a) Associate Administrators for:

(1) Aeronautics and Space Technology.
(2) Space Science and Applications.
(3) Space Flight.
(4) Space Station.
(5) Space Operations.
(6) Management.
(7) External Relations.
(8) Safety, Reliability, Maintainability and Quality Assurance.
(b) Associate Deputy Administrator.
(c) General Counsel.
Other members may be designated upon specific request of the Chairperson.

### § 1203.903 Ad hoc committees.

The Chairperson is authorized to establish such ad hoc panels or subcommittees as may be necessary in the conduct of the Committee's work.

### § 1203.904 Meetings.

(a) Meetings will be held at the call of the Chairperson.
(b) Records produced by the Committee and the minutes of each meeting will be maintained by the Executive Secretary.

## PART 1203a—NASA SECURITY AREAS

Sec.
1203a.100 Purpose and scope.
1203a.101 Definitions.
1203a.102 Establishment, maintenance, and revocation of security areas.
1203a.103 Access to security areas.
1203a.104 Violation of security areas.
1203a.105 Implementation by field and component installations.

AUTHORITY: 18 U.S.C. 799.

SOURCE: 38 FR 8056, Mar. 28, 1973, unless otherwise noted.

### § 1203a.100 Purpose and scope.

(a) To insure the uninterrupted and successful accomplishment of the NASA mission, certain designated security areas may be established and maintained by NASA installations and component installations in order to provide appropriate and adequate protection for facilities, property, or classified information and material in the possession or custody of NASA or NASA contractors located at NASA installations and component installations.
(b) This part 1203a sets forth:
(1) The designation and maintenance of security areas,
(2) The responsibilities and procedures in connection therewith, and
(3) The penalties that may be enforced through court actions against unauthorized persons entering security areas.

### § 1203a.101 Definitions.

For the purpose of this part, the following definitions apply:
(a) *Security area.* A physically defined area, established for the protection or security of facilities, property, or classfied information and material in the possession or custody of NASA or a NASA contractor located at a NASA installation or component installation, entry to which is subject to security measures, procedures, or controls. Security areas which may be established are:
(1) *Restricted area.* An area wherein security measures are applied primarily for the safeguarding or the administrative control of property or to protect operations and functions which are vital or essential to the accomplishment of the mission assigned to a NASA installation or component installation.
(2) *Limited area.* An area wherein security measures are applied primarily for the safeguarding of classified information and material or unclassified property warranting special protection and in which the uncontrolled movement of visitors would permit access to such classified information and material or property, but within which area such access may be prevented by appropriate visitor escort and other internal restrictions and controls.
(3) *Closed area.* An area wherein security measures are applied primarily for the purpose of safeguarding classified information and material; entry to the area being equivalent, for all practical purposes, to access to such classified information and material.
(b) *Temporary security area.* A designated interim security area, the need for which will not exceed 30 days from date of establishment. A temporary security area may also be established on

an interim basis, pending approval of its establishment as a permanent security area.

(c) *Permanent security area.* A designated security area, the need for which will exceed 30 days from date of establishment.

**§1203a.102 Establishment, maintenance, and revocation of security areas.**

(a) *Establishment.* (1) Directors of NASA field and component installations, and the Director of Headquarters Administration for NASA Headquarters (including component installations) may establish, maintain, and protect such areas as restricted, limited, or closed depending upon the opportunity available to unauthorized persons either to:

(i) Obtain knowledge of classified information,

(ii) Damage or remove property, or to

(iii) Disrupt Government operations.

(2) The concurrence of the Director of Security NASA Headquarters, will be obtained prior to the establishment of a permanent security area.

(3)(i) As a minimum, the following information will be submitted to the Director of Security 15 workdays prior to establishment of each permanent security area:

(*a*) The name and specific location of the NASA field or component installation, facility, or property to be protected.

(*b*) A statement that the property is owned by, or leased to, the United States for use by NASA or is the property of a NASA contractor located on a NASA installation or component installation.

(*c*) Designation desired: i.e., restricted, limited, or closed.

(*d*) Specific purpose(s) for the establishment of a security area.

(ii) For those areas currently designated by the installation as ''permanent security areas,'' the information set forth in paragraph (d)(3)(i) of this section will be furnished to the Security Division, NASA Headquarters, within 30 workdays of the effective date of this part.

(b) *Maintenance.* The security measures which may be utilized to protect such areas will be determined by the requirements of individual situations. As a minimum such security measures will:

(1) Provide for the posting of signs at entrances and at such intervals along the perimeter of the designated area as to provide reasonable notice to persons about to enter thereon. The Director of Security, NASA Headquarters, upon request, may approve the use of signs that are now being used pursuant to a State statute.

(2) Regulate authorized personnel entry and movement within the area.

(3) Deny entry of unauthorized persons or property.

(4) Prevent unauthorized removal of classified information and material or property from a NASA installation or component installation.

(c) *Revocation.* Once the need for an established permanent security area no longer exists, the area will be returned immediately to normal controls and procedures or as soon as practicable. The Director of Security will be informed of permanent security area revocations within 15 workdays.

**§1203a.103 Access to security areas.**

(a) Only those NASA employees, NASA contractor employees, and visitors who have a need for such access and who meet the following criteria may enter a security area:

(1) *Restricted area.* Be authorized to enter the area alone or be escorted by or under the supervision of a NASA employee or NASA contractor employee who is authorized to enter the area.

(2) *Limited area.* Possess a security clearance equal to the level of the classified information or material involved or be the recipient of a satisfactorily completed national agency check if classified material or information is not involved. Personnel who do not meet the requirements for unescorted access may be escorted by a NASA employee or NASA contractor employee who meets the access requirements and has been authorized to enter the area.

(3) *Closed area.* Possess a security clearance equal to the classified information or material involved.

(b) The directors of NASA field and component installations, and the Director of Headquarters Administration

for NASA Headquarters (including component installations) may rescind previously granted authorizations to enter a security area when an individual's continued presence therein is no longer required, threatens the security of the property therein, or is disruptive of Government operations.

### § 1203a.104 Violation of security areas.

(a) *Removal of unauthorized persons.* The directors of NASA field and component installations (or their designees) and the Director of Headquarters Administration for NASA Headquarters (including component installations) or his designee may order the removal or eviction of any person whose presence in a designated security area is in violation of the provisions of this part or any regulation or order established pursuant to the provisions of this part.

(b) *Criminal penalties for violation.* Whoever willfully violates, attempts to violate, or conspires to violate any regulation or order establishing requirements or procedures for authorized entry into an area designated restricted, limited, or closed pursuant to the provisions of this part may be subject to prosecution under 18 U.S.C. 799 which provides penalties for a fine of not more than $5,000 or imprisonment for not more than 1 year, or both.

### § 1203a.105 Implementation by field and component installations.

If a Director of a NASA field or component installation finds it necessary to issue supplemental instructions to any provision of this part, the instructions must first be published in the FEDERAL REGISTER. Therefore, the proposed supplemental instructions will be sent to the Security Division (Code DHZ), NASA Headquarters, in accordance with NASA Management Instruction 1410.10 for processing.

## PART 1203b—SECURITY PROGRAMS; ARREST AUTHORITY AND USE OF FORCE BY NASA SECURITY FORCE PERSONNEL

Sec.

1203b.100 Purpose.
1203b.101 Scope.
1203b.102 Definitions.
1203b.103 Arrest authority.
1203b.104 Exercise of arrest authority—general guidelines.
1203b.105 Use of non-deadly physical force when making an arrest.
1203b.106 Use of deadly force.
1203b.107 Use of firearms.
1203b.108 Management oversight.
1203b.109 Disclaimer.

AUTHORITY: Sec. 304(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2456a).

SOURCE: 57 FR 4926, Feb. 11, 1992, unless otherwise noted.

### § 1203b.100 Purpose.

This regulation implements section 304(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2456a), by establishing guidelines for the exercise of arrest authority and for the exercise of physical force, including deadly force, in conjunction with such arrest authority.

### § 1203b.101 Scope.

This part applies to only those NASA and NASA contractor security force personnel who are authorized to exercise arrest authority in accordance with 42 U.S.C. 2456a and this regulation.

### § 1203b.102 Definitions.

*Accredited Course of Training.* A course of instruction offered by the Federal Law Enforcement Training Center, or an equivalent course of instruction offered by another Federal agency. See § 1203b.103(a)(1).

*Arrest.* An act, resulting in the restriction of a person's movement, other than a brief detention for purposes of questioning about a person's identity and requesting identification, accomplished by means of force or show of authority under circumstances that would lead a reasonable person to believe that he/she was not free to leave the presence of the officer.

*Contractor.* NASA contractors and subcontractors at all tiers.

### § 1203b.103 Arrest authority.

(a) NASA security force personnel may exercise arrest authority, provided that:

(1) They graduate from an accredited training course (see § 1203b.102(a)); and

(2) They have been certified in writing by the Associate Administrator for Management Systems and Facilities, or designee, as specifically authorized to exercise arrest authority.

(b) The authority of NASA security force personnel to make a warrantless arrest is subject to the following conditions:

(1) The arresting officer must be guarding and protecting property owned or leased by, or under the control of, the United States under the administration and control of NASA or one of its contractors or subcontractors, at facilities owned by or contracted to NASA; and

(2) The person to be arrested has committed in the arresting officer's presence any offense against the United States; or

(3) The arresting officer has reasonable grounds to believe that the person to be arrested has committed or is committing any felony cognizable under the laws of the United States.

(c) The Office of the General Counsel, NASA Headquarters, or the Installation Chief Counsel's Office, as appropriate, shall provide guidance as to the applicability of these regulations.

### §1203b.104 Exercise of arrest authority—general guidelines.

(a) In making an arrest, the security force officer should announce his/her authority and that the person is under arrest prior to taking the person into custody. If the circumstances are such that making such announcements would be useless or dangerous to the security force officer or others, the security force officer may dispense with these announcements.

(b) The security force officer at the time and place of arrest may search the arrested person and the area immediately surrounding the arrested person for weapons and criminal evidence. This is to protect the arresting officer and to prevent the destruction of evidence.

(c) After the arrest is effected, the arrested person shall be advised of his/her constitutional right against self-incrimination. If the circumstances are such that making such advisement is dangerous to the officer or others, this requirement may be postponed until the immediate danger has passed. However, no interrogation of the individual may occur until he/she has been properly advised of his/her right against self-incrimination.

(d) Custody of the person arrested should be transferred to other Federal law enforcement personnel (e.g., United States Marshals or FBI agents) or to local law enforcement agency personnel, as appropriate, as soon as possible, in order to ensure that the person is brought before a magistrate without unnecessary delay.

### §1203b.105 Use of non-deadly physical force when making an arrest.

When a security force officer has the right to make an arrest, as discussed in §1203b.103, the officer may use only that non-deadly physical force which is reasonable and necessary to apprehend and arrest the offender; to prevent the escape of the offender; or to defend himself/herself or a third person from what the security force officer reasonably believes to be the use or threat of imminent use of non-deadly physical force by the offender. Verbal abuse alone by the offender cannot be the basis under any circumstances for use of non-deadly physical force by a security force officer.

### §1203b.106 Use of deadly force.

Deadly force shall be used only in those circumstances where the security force officer reasonably believes that either he/she or another person is in imminent danger of death or serious bodily harm.

### §1203b.107 Use of firearms.

(a) If it becomes necessary to use a firearm in any of the circumstances described in §1203b.106, NASA security force personnel shall comply with the following precautions whenever possible:

(1) Give an order to halt before firing.

(2) Do not fire if shots are likely to harm innocent bystanders.

(3) Shoot to stop.

(b) Warning shots are not authorized.

(c) In the event that a security force officer discharges a weapon while in a duty status:

(1) The incident shall be reported to the Installation Chief of Security who,

in turn, will report it to the NASA Security Office as expeditiously as possible, with as many details supplied as are available.

(2) The officer shall be promptly suspended from duty with pay or reassigned to other duties not involving the use of a firearm, as the Installation Director or the Associate Administrator for Management Systems and Facilities deems appropriate, pending investigation of the incident.

(3) The cognizant Installation Director, or for incidents occurring at NASA Headquarters, the Associate Administrator for Management Systems and Facilities, shall appoint an investigating officer to conduct a thorough investigation of the incident. Additional personnel may also be appointed, as needed to assist the investigating officer. Upon conclusion of the investigation, the investigating officer shall submit a written report of findings and recommendations to the appropriate Installation Director or the Associate Administrator for Management Systems and Facilities.

(4) Upon conclusion of the investigation, the Installation Director or the Associate Administrator for Management Systems and Facilities, with the advice of Counsel, shall determine the disposition appropriate to the case.

(d) Firearms will be periodically inspected and kept in good working order by a qualified gunsmith. Ammunition, holsters, and related equipment will be periodically inspected for deterioration and kept in good working order. Firearms and ammunition will be securely stored separately in locked containers. Firearms will not be stored in a loaded condition. Neither firearms nor ammunition will be stored in the same containers as money, drugs, precious materials, or classified information. NASA Headquarters and each Installation shall adopt procedures for the maintenance of records with respect to the issuance of firearms and ammunition.

[57 FR 4926, Feb. 11, 1992, as amended at 58 FR 5263, Jan. 21, 1993]

### § 1203b.108 Management oversight.

(a) The Administrator shall establish a committee to exercise management oversight over the implementation of arrest authority.

(b) The Administrator shall establish a reporting requirement for Headquarters and Field Installations.

(c) The Associate Administrator for Management Systems and Facilities, or designee, will ensure that all persons who are authorized to exercise arrest authority will, before performing these duties:

(1) Receive instructions on regulations regarding the use of force, including deadly force; and

(2) Demonstrate knowledge and skill in the use of unarmed defense techniques and their assigned firearms.

(d) The Associate Administrator for Management Systems and Facilities, or designee, will also:

(1) Provide periodic refresher training to ensure continued proficiency and updated knowledge as to the use of unarmed defense techniques;

(2) Require security force officers exercising arrest authority to requalify semiannually with their assigned firearms; and

(3) Require periodic refresher training to ensure continued familiarity with regulations.

(e) The Associate Administrator for Management Systems and Facilities and Installation Directors shall issue local management instructions, subject to prior NASA Headquarters approval, which will supplement this regulation for Headquarters/Installation-specific concerns.

[57 FR 4926, Feb. 11, 1992, as amended at 58 FR 5263, Jan. 21, 1993]

### § 1203b.109 Disclaimer.

These regulations are set forth solely for the purpose of internal National Aeronautics and Space Administration guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, and they do not place any limitations on otherwise lawful activities of security force personnel or the National Aeronautics and Space Administration.

# PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

## Subparts 1–3 [Reserved]

## Subpart 4—Small Business Policy

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1204.400 Scope of subpart.
1204.401 Policy.
1204.402 Responsibilities.
1204.403 General requirements.

## Subpart 5—Delegations and Designations

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1204.501 Delegation of authority—to take actions in real estate and related matters.
1204.502 [Reserved]
1204.503 Delegation of authority to grant easements.
1204.504 Delegation of authority to grant leaseholds, permits, and licenses in real property.
1204.505 Delegation of authority to execute certificates of full faith and credit.
1204.506–1204.507 [Reserved]
1204.508 Delegation of authority of certain civil rights functions to Department of Health, Education, and Welfare.
1204.509 Delegation of authority to take action regarding ''liquidated damage'' assessments under the Contract Work Hours and Safety Standards Act, and associated labor statutes.

## Subparts 6–9 [Reserved]

## Subpart 10—Inspection of Persons and Personal Effects on NASA Property

1204.1000 Scope of subpart.
1204.1001 Policy.
1204.1002 Responsibility.
1204.1003 Procedures.

## Subparts 11–13 [Reserved]

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1204.1400 Scope.
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1204.1503 Programs and activities subject to these regulations.
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1204.1511 Coordination in interstate situations.
1204.1512 [Reserved]
1204.1513 Waivers of provisions of these regulations.
APPENDIX A TO PART 1204—ITEMS TO COVER IN MEMORDANDA OF AGREEMENT

## Subparts 1–3 [Reserved]

## Subpart 4—Small Business Policy

AUTHORITY: 42 U.S.C. 2473(c)(5); 42 U.S.C. 2473b; Public Law 101–507, the VA/HUD/Indep. Agencies Appropriation Act for FY 1991, at 104 Stat. 1380 (Nov. 5, 1990); and 15 U.S.C. 631–650.

SOURCE: 58 FR 43554, Aug. 17, 1993, unless otherwise noted.

### §1204.400 Scope of subpart.

This subpart establishes NASA's small business policy and outlines the delegation of authority in implementing this policy as required by Federal law.

### §1204.401 Policy.

(a) It is the policy of NASA to enable small business concerns (including small women-owned businesses), Historically Black Colleges and Universities, and other minority educational institutions the opportunity to participate equitably and proportionately in its total purchases and contracts consistent with NASA's needs to execute its missions.

(b) In carrying out the NASA procurement program, the primary consideration shall be that of securing contract performance, including obtaining deliveries of required items or services at the time, in the quantity and of the quality prescribed. In the area of research and development contracts, the general policy of NASA is to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the interest of the civilian space program that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small and small disadvantaged business firms.

**§ 1204.402 Responsibilities.**

(a) *Office of Small and Disadvantaged Business Utilization (OSDBU).* The Associate Administrator for Small and Disadvantaged Business Utilization, NASA Headquarters, is responsible for the development, supervision, and coordination of the NASA Small Business Program. The Associate Administrator is also responsible for formulating policy and procedures relating to small business, and representing NASA before other Government agencies on matters primarily affecting small business.

(b) *NASA Headquarters and Field Installations.* The Directors of Field Installations and the Associate Administrator for Procurement at Headquarters will designate a qualified individual as a ''Small Business Specialist'' to provide a central point of contact to which small and small disadvantaged business concerns may direct inquiries concerning participation in the NASA procurement program, or secure assistance in submitting bids or proposals and performance of contracts. Where the Director of the Field Installation considers that the volume of procurement at the Installation does not warrant a full-time Small Business Specialist, the Director may assign such duties to qualified procurement personnel on a part-time basis. NASA Field Installations shall establish and maintain liaison with the Small Business Administration (SBA) Procurement Center Representative (PCR) or the appropriate Small Business Administration Regional Office in matters relating to Field Installation procurement activities. A Small Business Technical Advisor shall be assigned to each contracting activity within the agency to which the SBA has assigned a PCR.

**§ 1204.403 General requirements.**

(a) All proposed procurement transactions in excess of $25,000 shall be examined by a Small Business Specialist prior to issuance of bids or requests for proposals to determine suitability for small participation or set-asides, unless the transaction has already been set-aside for small business by the contracting officer.

(b) The appropriate office of the Small Business Administration (assigned PCR) shall be informed of proposed procurements estimated to exceed $25,000.

(c) A Bidder's list shall be maintained at each Field Installation on a current basis and reviewed to ensure that small business firms are given an equitable opportunity to participate in those procurements suitable for performance by such firms. Installations may use, at their option, the SBA Procurement Automated Source System (PASS) in lieu of the separate Center Bidder's list, if resources can be conserved.

(d) NASA Small Business Specialists shall acquire descriptive data, brochures, or other information concerning small business firms that appear competent to perform research and development (R&D) work in fields in which NASA is interested and furnish such information to appropriate NASA personnel for consideration of these firms in future R&D procurements. The Small Business Specialists at Headquarters and Field Installations shall assist and consult, as necessary, with NASA technical personnel in analyzing such information, arranging field inspection of facilities, making appointments for technical personnel with representatives of small business firms, and obtaining from other agencies appraisals of work performance by such firms. When feasible, Small Business

Specialists shall conduct or participate in outreach conferences and training sessions to inform small businesses of contracting opportunities with the Agency.

(e) In accordance with Public Law 95–507, NASA will require contractors having contracts in excess of $1 million for the construction of any public facility, and in excess of $500,000 for all other contracts, and of such nature as to afford opportunities for subcontracting in substantial amounts, to establish and conduct small business subcontracting programs. Such programs will be periodically reviewed by NASA Small Business Specialists to evaluate their adequacy.

(f) NASA will encourage competent small business concerns to submit unsolicited proposals for research and development work in areas within NASA's responsibility, which may lead to contracts for such work. The formation of contractor pools or joint ventures to perform research and development work will also be encouraged.

(g) NASA Small Business Specialists will disseminate to small business concerns information concerning inventions for which NASA holds patents on behalf of the United States and under which it is NASA policy to grant licenses.

(h) Small business participation in NASA procurement shall be accurately measured, recorded, and publicized.

(i) NASA small business personnel shall assist small business concerns to obtain payments under their contracts, late payment interest penalties, or information due to such concerns.

## Subpart 5—Delegations and Designations

AUTHORITY: 42 U.S.C. 2473.

### §1204.500 Scope of subpart.

This subpart establishes various delegations of authority to, and designations of, National Aeronautics and Space Administration officials and other Government officials acting on behalf of the agency to carry out prescribed functions of the National Aeronautics and Space Administration.

[30 FR 3378, Mar. 13, 1965]

### §1204.501 Delegation of authority—to take actions in real estate and related matters.

(a) *Delegation of authority*. The Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division, are delegated authority, in accordance with applicable laws and regulations, and subject to conditions imposed by immediate superiors, to:

(1) Prescribe agency real estate policies, procedures, and regulations;

(2) Enter into and take other actions including, but not limited to, the following;

(i) Acquire (by purchase, lease, condemnation, or otherwise) fee and lesser interests in real property and, in the case of acquisition by condemnation, to sign declarations of taking.

(ii) Use, with their consent, the facilities of Federal and other agencies with or without reimbursement.

(iii) Determine entitlement to and quantum of, financial compensation under, and otherwise exercise the authority contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and regulations in implementation thereof.

(iv) Grant easements, leaseholds, licenses, permits, or other interests (wherever located) controlled by NASA.

(v) Grant the use of NASA-controlled real property and approve the acquisition and use of nongovernment owned real property for any NASA-related, nonappropriated fund activity purpose with the concurrence of the NASA Comptroller.

(vi) Sell and otherwise dispose of real property in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq).

(vii) Exercise control over the acquisition, utilization, and disposal of movable/relocatable structures including prefabricated buildings, commercial packaged accommodations, trailers, and other like items used as facility substitutes.

(viii) Request other government agencies to act as real estate agent for NASA.

(ix) Authorize other NASA officials to take specific implementing action with regard to any real property transaction included in the scope of authority delegated in paragraph (a)(2) of this section.

(b) *Redelegation.* (1) The authority delegated in paragraph (a)(1) of this section may not be redelegated.

(2) The authority delegated in paragraph (a)(2) of this section may be redelegated with power of further redelegation.

(c) *Reporting.* The officials to whom authority is delegated in this section shall ensure that feedback is provided to keep the Administrator fully and currently informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

[51 FR 26862, July 28, 1986, as amended at 56 FR 57592, Nov. 13, 1991]

### § 1204.502 [Reserved]

### § 1204.503 Delegation of authority to grant easements.

(a) *Scope.* 40 U.S.C. 319 to 319C authorizes executive agencies to grant, under certain conditions, the easements as the head of the agency determines will not be adverse to the interests of the United States and subject to the provisions as the head of the agency deems necessary to protect the interests of the United States.

(b) *Delegation of authority.* The Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division, are delegated authority to take actions in connection with the granting of easements.

(c) *Definitions.* The following definitions will apply:

(1) *State* means the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(2) *Person* includes any corporation, partnership, firm, association, trust, estate, or other entity.

(d) *Determination.* It is hereby determined that grants of easements made in accordance with the provisions of this section will not be adverse to the interests of the United States.

(e) *Redelegation.* (1) The Directors of Field Installations with respect to real property under their supervision and management may, subject to the restrictions in paragraph (f) of this section, exercise the authority of the National Aeronautics and Space Act of 1958, as amended, and 40 U.S.C. 319 to 319C to authorize or grant easements in, over, or upon real property of the United States controlled by NASA as will not be adverse to the interests of the United States.

(2) The Directors of Field Installations may redelegate this authority to only two senior management officials of the appropriate field installation.

(f) *Restrictions.* Except as otherwise specifically provided, no such easement shall be authorized or granted under the authority stated in paragraph (e) of this section unless:

(1) The appropriate Director of the Field Installation determines:

(i) That the interest in real property to be conveyed is not required for a NASA program.

(ii) That the grantee's exercise of rights under the easement will not interfere with NASA operations.

(2) Monetary or other benefit, including any interest in real property, is received by the government as consideration for the granting of the easement.

(3) The instrument granting the easement provides:

(i) For the termination of the easement, in whole or in part, and without cost to the government, if there has been:

(A) A failure to comply with any term or condition of the grant;

(B) A nonuse of the easement for a consecutive 2-year period for the purpose for which granted; or

(C) An abandonment of the easement; or

(D) A determination by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the appropriate Director of the Field Installation that the interests of the national space program, the national defense, or the public welfare require the termination of the easement; and a 30-day notice, in writing, to the grantee that the determination has been made.

(ii) That written notice of the termination shall be given to the grantee, or its successors or assigns, by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the appropriate Director of the Field Installation, and that termination shall be effective as of the date of the notice.

(iii) For any other reservations, exceptions, limitations, benefits, burdens, terms, or conditions necessary to protect the interests of the United States.

(g) *Waivers.* If, in connection with a proposed granting of an easement, the Director of a Field Installation determines that a waiver from any of the restrictions in paragraph (f) of this section is appropriate, authority for the waiver may be requested from the Associate Administrator for Management Systems and Facilities or the Director, Facilities Engineering Division.

(h) *Services of the Corps of Engineers.* In exercising the authority herein granted, the Directors of Field Installations, under the applicable provisions of any cooperative agreement between NASA and the Corps of Engineers (in effect at that time), may:

(1) Utilize the services of the Corps of Engineers, U.S. Army.

(2) Delegate authority to the Corps of Engineers to execute, on behalf of NASA, grants of easements in real property, as authorized in this section, provided that the conditions set forth in paragraphs (f) and (g) of this section are complied with.

(i) *Distribution of documents.* One copy of each document granting an easement interest under this authority, including instruments executed by the Corps of Engineers, will be forwarded for filing in the Central Depository for Real Property Documents to: National Aeronautics and Space Administration, Facilities Operations and Maintenance Branch (Code JXG), Facilities Engineering Division, Washington, DC 20546.

[51 FR 26860, July 28, 1986, as amended at 56 FR 57592, Nov. 13, 1991]

## §1204.504 Delegation of authority to grant leaseholds, permits, and licenses in real property.

(a) *Delegation of authority.* The National Aeronautics and Space Act of 1958, as amended, authorizes NASA to grant leaseholds, permits, and licenses in real property. This authority is delegated to the Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division.

(b) *Definition. Real Property* means land, buildings, other structures and improvements, appurtenances, and fixtures located thereon.

(c) *Determination.* It is hereby determined that grants of leaseholds, permits, or licenses made in accordance with the provisions of this section will not be adverse to the interests of the United States.

(d) *Redelegation.* (1) The Directors of Field Installations with respect to real property under their supervision and management may, subject to the restrictions in paragraph (e) of this section, grant a leasehold, permit, or license to any person or organization, including other Government agencies, a State, or political subdivision or agency thereof. This authority may not be exercised with respect to real property which is (i) excess within the meaning of 40 U.S.C. 472(e), or (ii) proposed for use by a NASA exchange and subject to the provisions of NASA Management Instruction 9050.6, NASA Exchange Activities.

(2) The Directors of Field Installations may redelegate this authority to only two senior management officials of the Field Installation concerned.

(e) *Restrictions.* Except as otherwise specifically provided, no leasehold, permit, or license shall be granted under the authority stated in paragraph (d) of this section unless:

(1) The Director of the Field Installation concerned determines:

(i) That the interest to be granted is not required for a NASA program.

(ii) That the grantee's exercise of rights granted will not interfere with NASA operations.

(2) Fair value in money is received by NASA on behalf of the Government as consideration.

(3) The instrument provides:

(i) For a term not to exceed 5 years.

(ii) For the termination thereof, in whole or in part, and without cost to the Government if there has been:

(A) A failure to comply with any term or condition of the grant; or

(B) A determination by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the Director of the Field Installation concerned that the interests of the national space program, the national defense, or the public welfare require the termination of the interest granted; and a 30-day notice, in writing, to the grantee that such determination has been made.

(iii) That written notice of termination shall be given to the grantee, or its successors or assigns, by the Associate Administrator for Management Systems and Facilities, the Director, Facilities Engineering Division, or the Director of the Field Installation concerned, and that termination shall be effective as of the date specified by such notice.

(iv) For any other reservations, exceptions, limitations, benefits, burdens, terms, or conditions necessary to protect the interests of the United States.

(f) *Waivers.* If, in connection with a proposed grant, the Director of a Field Installation determines that a waiver from any of the restrictions set forth in paragraph (e) of this section is appropriate, a request may be submitted to the Associate Administrator for Management Systems and Facilities or the Director, Facilities Engineering Division.

(g) *Services of the Corps of Engineers.* In exercising the authority herein granted, the Directors of Field Installations, pursuant to the applicable provisions of any cooperative agreement between NASA and the Corps of Engineers (in effect at the time), may:

(1) Utilize the services of the Corps of Engineers, U.S. Army.

(2) Delegate authority to the Corps of Engineers to execute, on behalf of NASA, any grants of interests in real property as authorized in this section provided that the conditions set forth in paragraphs (e) and (f) of this section are complied with.

(h) *Distribution of Documents.* One copy of each document granting an interest in real property, including instruments executed by the Corps of Engineers, will be forwarded for filing in the Central Depository for Real Property Documents to: National Aeronautics and Space Administrator, Facilities Operations and Maintenance Branch (Code JXG), Facilities Engineering Division, Washington, DC 20546.

[51 FR 27528, Aug. 1, 1986, as amended at 56 FR 57592, Nov. 13, 1991]

### § 1204.505 Delegation of authority to execute certificates of full faith and credit.

(a) *Scope.* This section designates NASA officials authorized to certify NASA documents to be submitted in evidence in Federal Courts.

(b) *Delegation of authority.* The following NASA Headquarters officials are delegated authority to execute certificates of full faith and credit (Office of the Administrator section of NASA Form 955) certifying the signatures and authority of employees of the National Aeronautics and Space Administration, whenever such certification is required to authenticate copies of official records for possible admission in evidence in judicial proceedings pursuant to 28 U.S.C. 1733 or any other statute:

(1) General Counsel;

(2) Deputy General Counsel;

(3) [Reserved]

(4) Assistant General Counsels.

[29 FR 6319, May 14, 1964, as amended at 39 FR 25229, July 9, 1974; 43 FR 34122, Aug. 3, 1978]

### §§ 1204.506–1204.507 [Reserved]

### § 1204.508 Delegation of authority of certain civil rights functions to Department of Health, Education, and Welfare.

(a) Pursuant to the authority of § 1250.111(c) of this chapter, the following responsibilities of the National Aeronautics and Space Administration and of the responsible NASA official under Title VI, Civil Rights Act of 1964

(78 Stat. 252) (42 U.S.C. 2000d), with respect to institutions of higher education were delegated by the Administrator, NASA, to the Secretary, Department of Health, Education, and Welfare, on March 15, 1966:

(1) Responsibilities with respect to compliance reports, including receiving and evaluation thereof under §1250.105(b) of this chapter, and other actions under §1250.105 of this chapter.

(2) All actions under §1250.106 of this chapter, including periodic compliance reviews, receiving of complaints, investigations, determination of recipient's apparent failure to comply, and resolution of matters by informal means.

(b) NASA specifically has reserved to itself the responsibilities for effectuation of compliance under §§1250.107, 1250.108, and 1250.109 of this chapter.

(c) The responsibilities so delegated were and are to be exercised in accordance with the ''Plan for Coordinated Enforcement Procedures for Higher Education'' (dated February 1966), developed by interested Government agencies and approved by the Department of Justice; and redelegation by the Secretary to other officials of the Department of Health, Education, and Welfare was authorized.

(d) NASA has retained the right to exercise these responsibilities itself in special cases with the agreement of the appropriate official in the Department of Health, Education, and Welfare. The Office of Grants and Research Contracts, NASA Headquarters, has been designated to represent NASA in carrying out the provisions of this delegation.

[32 FR 3883, Mar. 9, 1967]

### §1204.509 Delegation of authority to take action regarding "liquidated damage" assessments under the Contract Work Hours and Safety Standards Act, and associated labor statutes.

(a) *Delegation of authority*. The Director, Industrial Relations Office, is hereby delegated the authority to act for the Administrator in all matters where the ''Agency Head'' is authorized to act under 29 CFR part 5, labor standards provisions applicable to contracts covering federally financed and assisted construction and labor standards provisions applicable to nonconstruction contracts as they are subject to the Conract Work Hours and Safety Standards Act, in regards to the assessment of liquidated damages.

(b) *Redelegation*. None authorized except by virtue of succession.

(c) *Reporting*. The official to whom authority is delegated in this regulation will assure that feedback is provided to keep the Administrator informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

[52 FR 35538, Sept. 22, 1987]

## Subparts 6–9 [Reserved]

## Subpart 10—Inspection of Persons and Personal Effects on NASA Property

SOURCE: 54 FR 2099, Jan. 19, 1989, unless otherwise noted.

### §1204.1000 Scope of subpart.

This subpart establishes NASA policy and prescribes certain minimum procedures concerning the inspection of persons and property in their possession on NASA installations.

### §1204.1001 Policy.

In the interest of national security, NASA will provide appropriate and adequate protection or security for facilities, property, and information in its possession or custody. In furtherance of this policy, NASA reserves the right to conduct an inspection of any person, including any property in the person's possession or control, as a condition of admission to or continued presence on any NASA installation.

### §1204.1002 Responsibility.

The Director for each Field Installation and the Assistant Administrator for Headquarters Operations are responsible for implementing the provisions of this subpart when it is determined that such action is necessary because of bomb threats, unexplained loss of Government property, or other unusual situations, for the protection or security of the installation and the personnel and property therein. In the

local implementation of this subpart, the Directors of NASA Installations (and component installations) located on Federal property under the control of other agencies will coordinate their action with appropriate officials of the other agencies concerned.

**§ 1204.1003 Procedures.**

(a) All entrances to NASA installations will be conspicuously posted with the following notices:

PURSUANT TO NASA REGULATIONS THE ENTRANCE OF INDIVIDUALS TO, OR THEIR CONTINUED PRESENCE ON, THIS INSTALLATION IS CONDITIONED UPON THEIR CONSENT TO INSPECTION OF THEIR PERSONS, AND OF PROPERTY IN THEIR POSSESSION OR CONTROL.

(b) Inspection pursuant to this subpart will be conducted only by NASA security personnel or members of the installation security patrol or guard force. Such inspections will be conducted in accordance with guidelines established by the Director, NASA Security Office, NASA Headquarters.

(c) If an individual does not consent to an inspection, it will not be carried out, and the individual will be denied admission to, or be escorted from, the installation.

(d) If, during an inspection, an individual is found to be in unauthorized possession of items believed to represent a threat to the safety or security of the installation, the individual will be denied admission to, or be escorted from, the installation and appropriate law enforcement authorities will be notified immediately.

(e) If, during an inspection conducted pursuant to this subpart, an individual is in possession of U.S. Government property without proper authorization, that person will be required to relinquish the property to the security representative conducting the inspection pending proper authorization for the possession of the property or its removal from the installation. The individual relinquishing the property will be given a receipt therefor.

## Subparts 11–13 [Reserved]

## Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

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

SOURCE: 56 FR 35812, July 29, 1991, unless otherwise noted.

**§ 1204.1400 Scope.**

This subpart establishes the responsibility and sets forth the conditions and procedures for the use of NASA airfield facilities by aircraft not operated for the benefit of the Federal Government.

**§ 1204.1401 Definitions.**

For the purpose of this subpart, the following definitions apply:

(a) *NASA Airfield Facility.* Those aeronautical facilities owned and operated by NASA that consist of the following:

(1) *Shuttle Landing Facility.* The aeronautical facility which is a part of the John F. Kennedy Space Center (KSC), Kennedy Space Center, Florida, and is located at 80° 41′ west longitude and 28° 37′ north latitude.

(2) *Wallops Airport.* The aeronautical facility which is part of the Wallops Flight Facility (WFF), Wallops Island, VA, and is located at 75° 28′ west longitude and 37° 56′ north latitude in the general vicinity of Chincoteague, Virginia.

(3) *Moffett Federal Airfield (MFA).* The aeronautical facility which is part of the Ames Research Center, Moffett Field, California, and is located at 122° 03′ west longitude and 37° 25′ north latitude.

(4) *Crows Landing Airport.* The aeronautical facility which is a part of the Crows Landing Flight Facility (CLEF) and is located at 121° 06′ west longitude and 37° 25′ north latitude, 45 miles east of the Ames Research Center.

(b) *Aircraft not Operated for the Benefit of the Federal Government.* Aircraft which are not owned or leased by the United States Government or aircraft carrying crew members or passengers

who do not have official business requiring the use of a NASA airfield facility in the particular circumstance in question.

(c) *Official Business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government personnel or organizations at or near a NASA facility. The use of a NASA airfield facility by transient aircraft to petition for U.S. Government business or to obtain clearance, servicing, or other items pertaining to itinerant operations is not considered official business.

(d) *User.* An individual partnership or corporation owning, operating, or using an aircraft not operated for the benefit of the Federal Government in whose name permission to use a NASA airfield facility is to be requested and granted.

(e) *Hold Harmless Agreement.* An agreement executed by the user by which the user acknowledges awareness of the conditions of the permission to use a NASA airfield facility, assumes any risks connected therewith, and releases the U.S. Government from all liability incurred by the use of such facility.

(f) *Use Permit.* The written permission signed by the authorized approving official to land, take off, and otherwise use a NASA airfield facility. Such use permit may be issued for single or multiple occasions. The specific terms of the use permit and the provisions of this subpart govern the use which may be made of the airport by aircraft not operated for the benefit for the Federal Government.

(g) *Certificate of Insurance.* A certificate signed by an authorized insurance company representative (or a facsimile of an insurance policy) evidencing that insurance is then in force with respect to any aircraft not operated for the benefit of the Federal Government, the user of which is requesting permission to use a NASA airfield facility (see §1204.1404(b)).

[56 FR 35812, July 29, 1991, as amended at 60 FR 37567, July 21, 1995]

### §1204.1402 Policy.

(a) NASA airfields are not normally available to the general public; hence, any use of airfield facilities by aircraft not operated for the benefit of the Federal Government shall be within the sole discretion of the approving authorities.

(b) Except in the event of a declared in-flight emergency (see §1204.1406) or as otherwise determined by an approving authority, aircraft not operated for the benefit of the Federal Government are not permitted to land or otherwise use NASA airfield facilities.

(c) Any use of a NASA airfield facility by aircraft not operated for the benefit of the Federal Government shall be free of charge and no consideration (monetary or otherwise) shall be exacted or received by NASA for such use. However, each user, as a condition of receiving permission to use such airfield facility, shall agree to become familiar with the physical condition of the airfield; abide by the conditions placed upon such use; subject the aircraft, the user, and those accompanying the user to any requirements imposed by NASA in the interest of security and safety while the aircraft or persons are on a NASA facility; use the facilities entirely at the user's own risk; hold the Federal Government harmless with respect to any and all liabilities which may arise as a result of the use of the facilities; and carry insurance covering liability to others in amounts not less than those listed in the Hold Harmless Agreement.

(d) Permission to use a NASA airfield facility will be granted only in accordance with the limitations and procedures established by an approving authority and then only when such use will not compete with another airport in the vicinity which imposes landing fees or other user charges.

(e) In no event, except for an in-flight emergency (see §1204.1406), will permission to use NASA airfield facilities be granted to an aircraft arriving directly from, or destined for, any location outside the continental United States unless previously arranged and approved by the authorized approving official.

(f) Permission to use NASA airfields may be granted only to those users having the legal capacity to contract and whose aircraft are in full compliance with applicable Federal Aviation

Administration (FAA) or other cognizant regulatory agency requirements.

(g) Permission to use NASA airfields, except in connection with a declared in-flight emergency, will consist only of the right to land, park an aircraft, and subsequently take off. NASA is not equipped to provide any other services such as maintenance or fuel and such services will not be provided except following an in-flight emergency.

### § 1204.1403 Available airport facilities.

The facilities available vary at each NASA Installation having an airfield. The airport facilities available are:

(a) *Shuttle Landing Facility*—(1) *Runways.* Runway 15–33 is 15,000 feet long and 300 feet wide with 1,000-foot overruns. The first 3,500 feet at each end of the runway have been modified for smoothness. The center 8,000 feet of the runway is grooved for improved braking under wet conditions.

(2) *Parking Areas and Hangar Space.* No hangar space is available. Limited available concrete parking ramp space makes precoordination necessary.

(3) *Control Tower.* The control tower is normally in operation from 0800 to 1600 local time, Monday through Friday. Additional hours of operation are filed with the St. Petersburg Flight Service Station (FSS). The tower may be contacted on 128.55 MHz or 284.0 MHz. FAA regulations pertaining to the operation of aircraft at airports with an operating control tower (§ 91.87 of this title) will apply. When the tower is not in operation, the FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* A Microwave Scanning Beam Landing System (MSBLS) and a Tactical Airborne Navigation System (TACAN) are installed at the Facility. There are two published TACAN approaches and an approved and published nondirectional beacon (NDB) approach available from Titusville. Runway approach lighting (similar to Category II ALSF–2) and edge lights are available by prior arrangement.

(5) *Hazards.* There are towers and buildings south, southeast, and northeast of the facility as high as 550 feet that could pose hazards to air navigation. All are marked with obstruction lights.

(6) *Emergency Equipment.* Aircraft Rescue and Fire-fighting (ARFF) equipment will be provided in accordance with 14 CFR part 139.

(b) *Wallops Airport*—(1) *Runways.* There are three hard surfaced runways in satisfactory condition. The runways and taxiways are concrete and/or asphalt. Runway 10–28 is 8,000 feet long, 200 feet wide with maximum wheel load of 57,500 pounds; runway 04–22 is 8,750 feet long, 150 feet wide with maximum wheel load of 57,500 pounds; and runway 17–35 is 4,820 feet long, 150 feet wide with maximum wheel load of 14,700 pounds.

(2) *Parking Areas and Hangar Space.* No hangar space is available. However, limited concrete parking ramp space is available as directed by the control tower.

(3) *Control Tower.* This control tower is normally in operation from 0630 to 1830 local time, Monday through Friday, excluding Federal holidays. The tower may be contacted on 126.5 MHz or 394.3 MHz. When the tower is in operation, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation, all aircraft operations will be handled by Wallops UNICOM on the tower frequency, and FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply. In addition to Federal Aviation Regulations (FAR's) (s 91 of this title), Wallops requires that pilots obtain clearances from the Wallops UNICOM before landings, takeoffs, and taxiing. Civil aircraft operations are normally confined to daylight hours.

(4) *Navigation Aids.* All runways, 04–22, 10–28, and 17–35 are lighted. Both active taxiways, parallels 04–22 and 10–28, are lighted. Airfield lighting is available upon request. All runway approaches are equipped with operating precision approach path indicator (PAPI) systems and are available on request. All airfield obstructions are equipped with red obstruction lights.

(5) *Hazards.* Numerous towers in airport vicinity up to 241 feet above ground level. Existing tree obstructions are located 1500 feet west of runway 10 threshold. High shore bird population exists in the Wallops area. Deer occasionally venture across runways. Light-controlled traffic crossovers are in existence. Potential radio frequency (RF) hazards exist from tracking radars. Hazards involving aircraft and rocket launch operations exist when Restricted Area R–6604 is active.

(6) *Emergency Equipment.* Aircraft rescue and fire-fighting equipment is normally available on a continuous basis.

(c) *Moffett Federal Airfield*—(1) *Runways.* There are two parallel runways, 32–14, both in satisfactory to good condition. The runways and taxiways are concrete and/or asphalt. Runway 32R–14L is 9,200 feet long, 200 feet wide; 32L–14R is 8,125 feet long, 200 feet wide with a 600 foot displaced threshold on 32L.

(2) *Parking areas and hangar space.* Hangar space is not available; concrete parking ramp space is available as directed by the control tower.

(3) *Control tower.* The control tower normally operates from 0700 to 2300 local time, 7 days a week, excluding Federal holidays. The tower frequencies are 126.2 Mhz, 353.2 Mhz, and 340.2 Mhz. When the tower is operating, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation, all aircraft operations will be conducted by Moffett UNICOM on the tower frequency. FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* An Instrument Landing System (ILS) is installed. An ILS/DME approach to runway 32R and an LOC/DME approach to runway 14L are published in DOD Flight Information Publication (Terminal), Low Altitude United States, Volume 2. ILS frequency is 110.35 Mhz, identifiers are Runway 32R, I–NUQ; Runway 14L, I–MNQ; Tactical Airborne Navigation (TACAN) (DME) is Channel 123, identifier is NUQ. Precision Approach Path Indicators (PAPI) are to be installed by July 1, 1995, to provide visual reference for the ILS and LOC approaches to runways 32R and 14L. A TACAN with approved and published approaches is operational at the facility (identification is NUQ, Channel 123). A Radio Controlled Lighting System (RCLS) is operational for the runway lights on 32R–14L; 3 clicks within 5 seconds, low intensity; 5 clicks, medium intensity; 7 clicks, high intensity (tower frequency, 126.2 Mhz). Lights automatically extinguish after 15 minutes.

(5) *Hazards.* Large blimp hangars (approximately 200 feet high) bracket the parallel runways, one on the west side, two on the east side. A freeway at the approach end of 32L displaces the threshold 600 feet.

(6) *Emergency equipment.* Aircraft Rescue and Fire Fighting (ARFF) equipment is provided by the California Air National Guard continuously in accordance with U.S. Air Force Regulations.

(d) *Crows Landing Airport*—(1) *Runways.* There are two concrete runways, 35–17 and 30–12, both in satisfactory condition. Parallel taxiways are asphalt overlay or concrete. Runway 35–17 is 7,950 feet long, 200 feet wide; runway 30–12 is 6,975 feet long, 200 feet wide.

(2) *Parking areas and hangar space.* Hangars/hangar space do not exist; concrete parking ramp space is available as directed by the control tower.

(3) *Control tower.* The control tower normally operates only when research flight is scheduled by NASA-Ames. The airfield is closed at all other times except as arranged by other Federal users with the Chief, Airfield Management Office, Moffett Federal Airfield. The tower frequencies are 125.05 Mhz, 126.2 Mhz, 328.1 Mhz, and 337.8 Mhz. When the tower is operating, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not operating, all aircraft operations will be conducted with Crows Landing UNICOM on the primary tower frequency. FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* Crows Landing Airport is a VFR facility. No certified

NAVAIDS or published approach procedures exist.

(5) *Hazards.* Crows Landing Airport is located in an agricultural area. No obstructions exist within or immediately adjacent to the airspace. The most persistent potential hazard is that of agricultural aircraft (crop dusters) without radios which transit the airspace.

(6) *Emergency equipment.* Aircraft Rescue and Fire Fighting (ARFF) equipment and services are provided by the California Air National Guard only during published hours of operation.

(e) *Other facilities.* No facilities or services other than those described above are available except on an individual emergency basis to any user.

(f) *Status of facilities.* Changes to the status of the KSC, WFF, MFA, and CLFF facilities will be published in appropriate current FAA or DOD aeronautical publications.

[56 FR 35812, July 29, 1991, as amended at 60 FR 37568, July 21, 1995]

### § 1204.1404 Requests for use of NASA airfield facilities.

(a) Request for use of a NASA airfield, whether on a one time or recurring basis, must be in writing and addressed to the appropriate NASA facility, namely:

(1) *Shuttle Landing Facility.* Director of Center Support Operations, John F. Kennedy Space Center, Kennedy Space Center, Florida 32899.

(2) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, Virginia 23337.

(3) *Moffett Federal Airfield and Crows Landing Flight Facility.* Chief, Airfield Management Office, Ames Research Center, Mail Stop 158–1, Moffett Field, California 94035–1000.

(b) Such requests will:

(1) Fully identify the prospective user and aircraft.

(2) State the purpose of the proposed use and the reason why the use of the NASA airfield is proposed rather than a commercial airport.

(3) Indicate the expected annual use, to include number and approximate date(s) and time(s) of such proposed use.

(4) State that the prospective user is prepared to fully comply with the terms of this subpart 14 and the use permit which may be issued.

(c) Upon receipt of the written request for permission to use the airport, the NASA official designated by each facility will request additional information, if necessary, and forward both this regulation and the required Hold Harmless Agreement for execution by the requestor or forward, where appropriate, a denial of the request.

(d) The signed original of the Hold Harmless Agreement shall be returned to the designated NASA official, and a copy retained in the aircraft at all times. Such copy shall be exhibited upon proper demand by any designated NASA official.

(e) At the same time that the prospective user returns the executed original of the Hold Harmless Agreement, the user shall forward to the designated NASA official the required Certificate of Insurance and waiver of rights to subrogation. Such certificate shall evidence that during any period for which a permit to use is being requested, the prospective user has in force a policy of insurance covering liability in amounts not less than those listed in the Hold Harmless Agreement.

(f) When the documents (in form and substance) required by paragraphs b through e of this section have been received, they will be forwarded with a proposed use permit to the approving authority for action.

(g) The designated NASA official will forward the executed use permit or notification of denial thereof to the prospective user after the approving authority has acted.

[56 FR 35812, July 29, 1991, as amended at 60 FR 37568, July 21, 1995]

### § 1204.1405 Approving authority.

The authority to establish limitations and procedures for use of a NASA airfield, as well as the authority to approve or disapprove the use of the NASA airfield facilities subject to the terms and conditions of this subpart and any supplemental rules or procedures established for the facility is vested in:

(a) *Shuttle Landing Facility.* Director of Center Support Operations, Kennedy Space Center, NASA.

(b) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, NASA.

(c) *Moffett Federal Airfield and Crows Landing Flight Facility.* Chief, Airfield Management Office, Ames Research Center, NASA.

[56 FR 35812, July 29, 1991, as amended at 60 FR 37568, July 21, 1995]

### §1204.1406 Procedures in the event of a declared in-flight emergency.

(a) Any aircraft involved in a declared in-flight emergency that endangers the safety of its passengers and aircraft may land at a NASA airfield. In such situations, the requirements for this subpart for advance authorizations, do not apply.

(b) NASA personnel may use any method or means to clear the aircraft or wreckage from the runway after a landing following an in-flight emergency. Care will be taken to preclude unnecessary damage in so doing. However, the runway will be cleared as soon as possible for appropriate use.

(c) The emergency user will be billed for all costs to the Government that result from the emergency landing. No landing fee will be charged, but the charges will include the labor, materials, parts, use of equipment, and tools required for any service rendered under these circumstances.

(d) In addition to any report required by the Federal Aviation Administration, a complete report covering the landing and the emergency will be filed with the airfield manager by the pilot or, if the pilot is not available, any other crew member or passenger.

(e) Before an aircraft which has made an emergency landing is permitted to take off (if the aircraft can and is to be flown out) the owner or operator thereof shall make arrangements acceptable to the approving authority to pay any charges assessed for services rendered and execute a Hold Harmless Agreement. The owner or operator may also be required to furnish a certificate of insurance, as provided in §1204.1404, covering such takeoff.

### §1204.1407 Procedure in the event of an unauthorized use.

Any aircraft not operated for benefit of the Federal Government which lands at a NASA airfield facility without obtaining prior permission from the approving authority, except in a bona fide emergency, is in violation of this subpart. Such aircraft will experience delays while authorization for departure is obtained pursuant to this subpart and may, contrary to the other provisions of this subpart, be required, at the discretion of the approving authority, to pay a user fee of not less than $100. Before the aircraft is permitted to depart, the approving authority will require full compliance with this subpart 1204.14, including the filing of a complete report explaining the reasons for the unauthorized landing. Violators could also be subject to legal liability for unauthorized use. When it appears that the violation of this subpart was deliberate or is a repeated violation, the matter will be referred to the Aircraft Management Office, NASA Headquarters, which will then grant any departure authorization.

## Subpart 15—Intergovernmental Review of National Aeronautics and Space Administration Programs and Activities

AUTHORITY: E.O. 12372, July 14, 1982, 47 FR 30959, as amended April 8, 1983, 48 FR 15887; sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29340, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

### §1204.1501 Purpose.

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct Federal development.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the agency or its officers.

### § 1204.1502 Definitions.

*Administrator* means the Administrator of the U.S. National Aeronautics and Space Administration or an official or employee of the Agency acting for the Administrator under a delegation of authority.

*Agency* means the U.S. National Aeronautics and Space Administration.

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled ''Intergovernmental Review of Federal Programs.''

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

### § 1204.1503 Programs and activities subject to these regulations.

The Administrator publishes in the FEDERAL REGISTER a description of the Agency's programs and activities that are subject to these regulations.

### § 1204.1504 [Reserved]

### § 1204.1505 Federal interagency coordination.

The Administrator to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Agency regarding programs and activities covered under these regulations.

### § 1204.1506 Procedures for selecting programs and activities under these regulations.

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 1204.1503 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Administrator of the Agency's programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit to the Administrator an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a state's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

### § 1204.1507 Communicating with State and local officials concerning the Agency's programs and activities.

(a) For those programs and activities covered by a state process under § 1204.1506 the Administrator, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and;

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice to directly affected state, areawide, regional, and local entities in a state of proposed direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The development involves a program or activity not selected for the state process.

This notice may be made by publication in a periodical of general circulation in the area likely to be affected or other appropriate means, which the Agency in its discretion deems appropriate.

**§1204.1508 Time limitations for receiving comments on proposed direct Federal development.**

(a) Except in unusual circumstances, the Administrator gives state processes or state, areawide, regional and local officials and entities at least 60 days from the date established by the Administrator to comment on proposed direct Federal development.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency has been delegated.

**§1204.1509 Receiving and responding to comments.**

(a) The Administrator follows the procedures in §1204.1510 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under §1204.1506.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officals and entities may submit comments to the Agency.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Agency. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Agency by the single point of contact, the Administrator follows the procedures of §1204.1510 of this part.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of §1204.1510 of this part, when such comments are provided by a single point of contact, or directly to the Agency by a commenting party.

**§1204.1510 Efforts to accommodate intergovernmental concerns.**

(a) If a state provides a state process recommendation to the Agency through its single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) Reaches a mutally agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of its decision, in such form as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) The Agency will not implement its decision for a least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

**§1204.1511 Coordination in interstate situations.**

(a) The Administrator is responsible for—

(1) Identifying proposed direct Federal development that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Agency's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Agency's program or activity;

(4) Responding pursuant to § 1204.1510 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Agency have been delegated.

(b) The Administrator uses the procedures in § 1204.1510 if a state process provides a state process recommendation to the Agency through a single point of contact.

### § 1204.1512 [Reserved]

### § 1204.1513 Waivers of provisions of these regulations.

In an emergency, the Administrator may waive any provision of these regulations.

#### APPENDIX A TO PART 1204—ITEMS TO COVER IN MEMORANDA OF AGREEMENT

The items to be covered in Memoranda of Agreement between NASA Installations and state and areawide OMB Circular A–95 clearinghouses for coordinating NASA and civilian planning:

1. Clearinghouses will be contacted at the earliest practicable point in project planning. Generally, this will be during the preparation of Preliminary Engineering Reports, or possibly earlier if meaningful information is available that could practically serve as an input in the decision-making process. It should be noted that clearinghouses are generally comprehensive planning agencies. As such, they are often the best repositories of information required for development planning and constitute a resource that can often save Federal planners substantial time and effort, if consulted early enough. In addition to providing information necessary for preliminary engineering, clearinghouses can make useful inputs to the development of environmental impact statements, as well as in reviewing draft statements. Thus, consultation at the earliest stage in planning can have substantial payoffs in installation development.

2. Clearinghouses will be afforded a minimum time of 30 days in which to review and comment on a proposed project and a maximum time of 45 days in which to complete such review.

3. The minimum information to be provided to the clearinghouse will consist of project description, scope and purpose, summary technical data, maps and diagrams where relevant, and any data which would show the relationship of the proposed project or action to applicable land use plans, policies, and controls for the affected area.

4. Establish procedures for notifying clearinghouses of the actions taken on projects, such as implementation, timing, postponement, abandonment, and explaining, where appropriate, actions taken contrary to clearinghouse recommendations.

## PART 1205 [RESERVED]

## PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

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### Subpart 8—Failure to Release Records to the Public

1206.800 Failure to release records to the public.

### Subpart 9—Annual Report

1206.900 Requirements for annual report.

AUTHORITY: Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473 and 5 U.S.C. 552 as amended by Pub. L. 93–504, 88 Stat. 1561, Pub. L. 99–570, unless otherwise noted; the Privacy Act of 1974, 5 U.S.C. 552a.

SOURCE: 52 FR 41407, Oct. 28, 1987, unless otherwise noted.

## Subpart 1—Basic Policy

### §1206.100 Scope of part.

This part 1206 establishes the policies, responsibilities, and procedures for the release to members of the public of agency records which are under the jurisdiction of the National Aeronautics and Space Administration. This part applies to information and agency records located at NASA Headquarters, at NASA Field Installations, and at NASA component installations, as defined in part 1201 of this chapter.

### §1206.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) The term *agency records* or *records* includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by NASA in pursuance of Federal law or in connection with the transaction of public business and preserved by NASA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities or because of the informational value of data contained therein. It does not include tangible objects or articles, such as structures, furniture, paintings, sculptures, exhibits, models, vehicles or equipment; library or museum material made or acquired and preserved solely for reference or exhibition purposes; or records of another agency, a copy of which may be in NASA's possession.

(b) The term *initial determination* means a decision by a NASA official, in response to a request by a member of the public for an agency record, on whether the record described in the request can be identified and located after a reasonable search and, if so, whether the record (or portions thereof) will be made available under this part or will be withheld from disclosure under subpart 3 of this part.

(c) The term *appeal* means a request by a member of the public to the Administrator or designee, or, in the case of records as specified in §1206.504, to the Inspector General or designee for reversal of any adverse initial determination the requestor has received in response to a request for an agency record.

(d) The term *final determination* means a decision by the Administrator or designee, or, in the case of records as specified in §1206.504, by the Inspector General or designee on an appeal.

(e) The term *working days* means all days except Saturdays, Sundays and legal public holidays.

(f) As used in §1206.608, the term *unusual circumstances* means, but only to the extent reasonably necessary to the

proper processing of a particular request for agency records—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the NASA Information Center processing the request (see subpart 6 of this part for procedures for processing a request for agency records);

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NASA having substantial subject-matter interest therein.

(g) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency to set the level of fees for particular types of records in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(h) The term *direct costs* means those expenditures which NASA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee who would ordinarily perform the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. NASA will ensure that searching for material is done in the most efficient, least expensive manner so as to minimize costs for both the agency and the requester and will only utilize line-by-line, page-by-page search when consistent with this policy. *Search* should be distinguished, however, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section). Searches may be done manually or by computer using existing programming.

(j) The term *duplication* refers to the process of making a copy of a document in order to respond to an FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(k) The term *review* refers to the process of examining documents located in response to a commercial use request (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) The term *commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the request or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NASA will look first to the use to which a requester will put the documents requested. Where NASA has reasonable cause to doubt the use to which a requester will put the records sought or where that use is not clear

from the request itself, NASA will seek additional clarification before assigning the request to a specific category. A request from a corporation (not a *news media* corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category.

(m) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(n) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *freelance* journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

(p) The term *commercial information* means, for the purpose of applying the notice requirements of §1206.610, information provided by a submitter and in the possession of the National Aeronautics and Space Administration, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(q) The term *submitter* means a person or entity that is the source of commercial information in the possession of the National Aeronautics and Space Administration. The term *submitter* includes but is not limited to, corporations, state governments, and foreign governments. It does not include other federal government agencies or departments.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 13518, Apr. 4, 1989]

### §1206.102 General policy.

(a) In accordance with section 203(a)(3) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(a)(3)), it has been and continues to be NASA policy to provide for the ''widest practicable and appropriate dissemination of information concerning its activities and the results thereof.''

(b) In compliance with the ''Freedom of Information'' amendments to the Administrative Procedure Act (5 U.S.C. 552, as amended by Public Laws 90–23, 93–502 and 99–570), a positive and continuing obligation exists for NASA to make available upon request by members of the public to the fullest extent practicable, all agency records under its jurisdiction, as described in subpart 2 of this part, except to the extent that they may be exempt from disclosure under subpart 3 of this part.

## Subpart 2—Records Available

### § 1206.200 Types of records to be made available.

(a) Records required to be published in the FEDERAL REGISTER. The following records are required to be published in the FEDERAL REGISTER, for codification in title 14, chapter V, of the CFR.

(1) Description of NASA Headquarters and field organization and the established places at which, the employees from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which NASA's functions are channeled and determined, including the nature, and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by NASA;

(5) Each amendment, revision, or repeal of the foregoing.

(b) *Agency opinions, orders, statements, and manuals.* (1) Unless they are exempt from disclosure under subpart 3 of this part, or unless they are promptly published and copies offered for sale, NASA shall make available the following records for public inspection and copying or purchase:

(i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, such as opinions of the NASA Board of Contract Appeals;

(ii) Those statements of NASA policy and interpretations which have been adopted by NASA and are not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals (or similar issuances) and instructions to staff that affect a member of the public.

(2) In connection with all records required to be made available or published under this paragraph (b), identifying details shall be deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. However, in each case the justification for the deletion shall be explained fully in writing. A copy of such justification shall be attached to the front of the portion of the record made available to the requester.

(3) In connection with all records required to be made available or published under this paragraph (b) which are issued, adopted, or promulgated after July 4, 1967, except to the extent they are exempt from disclosure under subpart 3 of this part, current indexes providing identifying information will be maintained and made available for public inspection and copying or purchase (see § 1206.402).

(c) *Other agency records.* In addition to the records made available or published under paragraphs (a) and (b) of this section, NASA shall, upon request for other records made in accordance with this part, make such records promptly available to any person, unless they are exempt from disclosure under subpart 3 of this part, or unless they may be purchased from other readily available sources, as provided in § 1206.201.

### § 1206.201 Records which have been published.

Publication in the FEDERAL REGISTER is a means of making certain agency records available to the public. Also, the Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards (Department of Commerce) is a source of information concerning agency records or actions. Various other NASA publications and documents, and indexes thereto, are available from other sources, such as the U.S. Superintendent of Documents, the National Technical Information Service (Department of Commerce), and the Earth Resources Observation Systems (EROS) Data Center (Department of the Interior). Such publications and documents are not required to be made available or reproduced in response to a request therefor unless they cannot be purchased readily from available sources. If a publication or document is readily available from a source other than NASA, the requester shall be informed

of the procedures to follow to obtain the publication or document.

**§1206.202 Deletion of segregable portions of a record.**

If a record requested by a member of the public contains both information required to be made available and that which is exempt from disclosure under subpart 3 of this part, and the portion of the records that is required to be made available is reasonably segregable from the portion that is exempt, the portion that is exempt from disclosure shall be deleted and the balance of the record shall be made available to the requester. If the non-exempt portion of the record appears to be unintelligible or uninformative, the requester shall be informed of that fact, and such non-exempt portion shall not be sent to the requester unless he thereafter specifically requests it.

**§1206.203 Creation of records.**

Records will not be created by compiling selected items from the files at the request of a member of the public, nor will records be created to provide the requester with such data as ratios, proportions, percentages, frequency distributions, trends, correlations, or comparisons

**§1206.204 Records of interest to other agencies.**

If a NASA record is requested and another agency has a substantial interest in the record, such an agency shall be consulted on whether the record shall be made available under this part (see §1206.101(f)(3)). If a record is requested that is a record of another agency, the request shall be returned to the requester, as provided in §1206.604(c).

**§1206.205 Incorporation by reference.**

Matter which is reasonably available to the members of the public affected thereby shall be deemed published in the FEDERAL REGISTER when incorporated by reference in material published in the FEDERAL REGISTER (pursuant to the FEDERAL REGISTER regulation on incorporation by reference, 1 CFR part 51).

**§1206.206 Availability for copying.**

Except as provided in §1206.201, the availability of a record for inspection shall include the opportunity to extract information therefrom or to purchase copies.

**§1206.207 Copies.**

The furnishing of a single copy of the requested record will constitute compliance with this part.

**§1206.208 Release of exempt records.**

If a record which has been requested is exempt from disclosure under subpart 3 of this part, the record may nevertheless be made available under the procedures of subpart 6 of this part if it is determined by an official authorized to make either an initial determination or a final determination that such action would not be inconsistent with a purpose of the exemptions set forth in subpart 3 of this part.

## Subpart 3—Exemptions

**§1206.300 Exemptions.**

(a) Under 5 U.S.C. 552(b) agency records falling within the exemptions of paragraph (b) of this section are not required to be made available under this part. Such records may nevertheless be made available if it is determined that such actions would not be inconsistent with a purpose of the exemption (see §1206.208).

(b) The requirements of this part to make agency records available do not apply to matters that are—

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of NASA;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with NASA;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(A) Whenever a request is made which involves access to these records and—

(*1*) The investigation or proceeding involves a possible violation of criminal law; and

(*2*) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

[52 FR 41407, Oct. 28, 1982; 53 FR 5765, Feb. 26, 1988]

### § 1206.301 Limitation of exemptions.

(a) This part 1206 does not authorize the withholding of information or the availability of records to the public, except as specifically stated in this part.

(b) Nothing in this part shall be construed as authority to withhold information from Congress.

## Subpart 4—Location for Inspection and Request of Agency Records

### § 1206.400 Information centers.

NASA will maintain Information Centers as set forth in this subpart.

### § 1206.401 Location of NASA information centers.

NASA will maintain the following Information Centers, at which agency records may be inspected, from which copies of agency records may be requested and at which copies of agency forms may be obtained:

(a) NASA Headquarters Information Center, National Aeronautics and

Space Administration, Washington, DC 20546.

(b) NASA Information Center, Ames Research Center, Moffett Field, CA 94035.

(c) NASA Information Center, Hugh L. Dryden Flight Research Facility, Post Office Box 273, Edwards, CA 93523.

(d) NASA Information Center, Goddard Space Flight Center, Greenbelt, MD 20771.

(e) NASA Information Center, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

(f) NASA Information Center, Langley Research Center, Langley Station, Hampton, VA 23665.

(g) NASA Information Center, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

(h) NASA Information Center, Lyndon B. Johnson Space Center, Houston, TX 77058.

(i) NASA Information Center, George C. Marshall Space Flight Center, Huntsville, AL 35812.

(j) NASA Information Center, John C. Stennis Space Center, MS 39529.

(k) NASA Information Center, NASA Resident Procurement Office (JPL), 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA Information Center, Wallops Flight Facility, Wallops Island VA 23337.

[52 FR 41407, Oct. 28, 1987; 53 FR 2738, Feb. 1, 1988, as amended at 54 FR 49750, Dec. 1, 1989]

### §1206.402 Documents available for inspection at NASA information centers.

(a) Each NASA Information Center will have available for inspection, as a minimum, a current version of the following documents:

(1) The Freedom of Information Act (5 U.S.C. 552, as amended by Pub. L 90–23 and Pub L. 93–502);

(2) Title 14, chapter V, and title 41, chapter 18, Code of Federal Regulations, and material published in the FEDERAL REGISTER for codification but not yet included in the Code of Federal Regulations;

(3) A master list and index of NASA Issuances, and a copy of all such issuances;

(4) A list and index of the management issuances of the NASA installation at which the Information Center is located, and a copy of such issuances;

(5) NASA's Scientific and Technical Aerospace Reports (STAR) and current indexes thereto;

(6) Cumulative Index to Selected Speeches and News Releases issued by NASA Headquarters;

(7) Index/Digest of Decisions, NASA Board of Contract Appeals;

(8) Decisions of the NASA Contract Adjustment Board and a current index thereto;

(9) NASA Handbook NHB 5500.1A containing an index to decisions of the NASA Inventions and Contributions Board on Petitions for Patent Waivers;

(10) Copies of Environmental Impact Statements filed by NASA under the National Environmental Policy Act of 1969;

(11) Collection of all issues of ''NASA Activities''; and

(12) List of licenses granted under NASA-owned patents.

(b) Because the indexes listed in paragraph (a) of this section are voluminous and because current versions thereof will be available for inspection at NASA Information Centers, from which copies of the indexes may be requested under §1206.603, it is determined and so ordered that publication of the indexes quarterly in the FEDERAL REGISTER would be unnecessary and impractical.

### §1206.403 Duty hours.

The NASA Information Centers listed in §1206.401 shall be open to the public during all regular workdays, from 9 a.m. to 4 p.m.

## Subpart 5—Responsibilities

### §1206.500 Assistant Deputy Administrator.

Except as otherwise provided in §1206.504, the Assistant Deputy Administrator or designee is responsible for the following:

(a) Providing overall supervision and coordination of the implementation of the policies and procedures set forth in this part 1206;

(b) After consultation with the General Counsel, making final determinations under §1206.607, within the time

limits specified in subpart 6 of this part;

(c) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for a final determination.

[52 FR 41407, Oct. 28, 1987; 53 FR 2738, Feb. 1, 1988, as amended at 54 FR 49750, Dec. 1, 1989]

### § 1206.501 General Counsel.

The General Counsel is responsible for the interpretation of 5 U.S.C. 552 and of this part, and for the handling of litigation in connection with a request for an agency record under this part.

### § 1206.502 Field and component installations.

(a) Except as otherwise provided in § 1206.504, the Director of each NASA Installation or the Official-in-Charge of each Component Installation is responsible for the following:

(1) After consultation with the Chief Counsel or the Counsel charged with providing legal advice to a Field or a Component Installation, making initial determinations under §§ 1206.603 and 1206.604;

(2) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(3) In coordination with the Assistant Deputy Administrator, ensuring that requests for records under the cognizance of his/her respective installation are processed and initial determinations made within the time limits specified in subpart 6 of this part.

(b) If so designated by the Director or Official-in-Charge of the respective installation, the principal Public Affairs Officer at the installation may perform the functions set forth in paragraphs (a)(1) and (2) of this section.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

### § 1206.503 NASA Headquarters.

(a) Except as otherwise provided in § 1206.504, the Associate Administrator for Communications, is responsible for the following:

(1) Preparing the annual reports required by § 1206.900, including establishing reporting procedures throughout NASA to facilitate the preparation of such reports;

(2) After consultation with the Office of General Counsels, making initial determinations under §§ 1206.603 and 1206.604;

(3) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(4) In coordination with the Assistant Deputy Administrator, ensuring that requests for agency records under the cognizance of Headquarters are processed and initial determinations made within the time limits specified in subpart 6 of this part.

(b) The functions set forth in paragraphs (a)(1), (2) and (3) of this section may be delegated by the Associate Administrator for Communications to a Public Affairs Officer or Specialist and to the Manager of his/her designee, NASA Resident Procurement Office—JPL.

[52 FR 41407, Oct. 28, 1987; 53 FR 2738, Feb. 1, 1988, as amended at 54 FR 49750, Dec. 1, 1989]

### § 1206.504 Inspector General.

(a) The Inspector General or designee is responsible for making final determinations under § 1206.607 within the time limits specified in subpart 6 of this part, with respect to audit and investigative documents originating in the Office of the Inspector General, documents from outside the Government related to an audit or investigation, documents prepared in response to a request from or addressed to the Office of the Inspector General, or other documents originating within the Office of the Inspector General, after consultation with the General Counsel or designee on an appeal of an initial determination to the Inspector General.

(b) The Assistant Inspectors General or their designees are responsible for making initial determinations under §§ 1206.603 and 1206.604 with respect to audit and investigative documents originating in the Office of the Inspector General, documents from outside the Government related to an audit or investigation, documents prepared in response to a request from or addressed to the Office of the Inspector General, or other documents originating with

the Office of the Inspector General, after consultation with the Attorney-Advisor to the Inspector General or designee.

(c) The Inspector General or designee is responsible for ensuring that requests for agency records as specified in paragraphs (a) and (b) of this section are processed and initial determinations are made within the time limits specified in subpart 6 of this part.

(d) The Inspector General or designee is responsible for determining whether unusual circumstances exist under §1206.608 as would justify the extension of the time limit for an initial or final determination, for records as specified in paragraphs (a) and (b) of this section.

(e) Records as specified in paragraphs (a) and (b) of this section include any records located at Regional Inspector General Offices as well as records located at the Headquarters Office of the Inspector General.

### §1206.505 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this subpart is delegated from the Administrator to the officials named in this subpart.

## Subpart 6—Procedures

### §1206.600 Requests for records.

A member of the public may request an agency record by mail or in person from the Freedom of Information Act (FOIA) Office having cognizance over the record requested or from the NASA Headquarters FOIA Office.

[54 FR 49750, Dec. 1, 1989]

### §1206.601 Mail requests.

In view of the time limits under 5 U.S.C. 552(a)(6) for an initial determination on a request for an agency record (see §1206.603), a request by mail must meet the following requirements:

(a) The request must be addressed to an appropriate NASA FOIA Office or otherwise be clearly identified on the envelope and in the letter as a request for an agency record under the ''Freedom of Information Act''.

(b) The request must identify the record requested or reasonably describe it in such a manner as to enable a professional NASA employee who is familiar with the subject area of the request to identify and locate the record with a reasonable amount of effort. NASA need not comply with a blanket or categorical request (such as ''all matters relating to'' a general subject) where it is not feasible reasonably to determine what is sought. NASA will in good faith endeavor to identify and locate the record sought and will consult with the requester when necessary and appropriate for that purpose. However, as provided in §1206.203, NASA will undertake no obligation to compile or create information or records not already in existence at the time of the request.

(c) If a fee is chargeable under subpart 7 of this part for search or duplication costs incurred in connection with a request for an agency record, and the requester knows the amount of the fee at the time of the request, the request should be accompanied by a check or money order payable in that amount to the ''National Aeronautics and Space Administration.'' NASA cannot be responsible for cash sent by mail; stamps will not be accepted. If the amount of the fee chargeable is not known at the time of the request, the requester will be notified in the initial determination (or in a final determination in the case of an appeal) of the amount of the fee chargeable (see §1206.608(c)). For circumstances in which advance payment of fees is required, see §1206.704.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

### §1206.602 Requests in person.

(a) A member of the public may request an agency record in person at a NASA FOIA Office (see §1206.401) during the duty hours of the installation.

(b) A request at an FOIA Office must identify the record requested or reasonably describe it as provided in §1206.601(b).

(c) If the record requested is located at the FOIA Office or otherwise readily obtainable, it shall be made available to the requester upon the payment of any fees that are chargeable (see subpart 7 of this part), which fees may be paid in cash or by a check or money order payable to the ''National Aeronautics and Space Administration.'' If

the record requested is not located at the FOIA Office or otherwise readily obtainable, the request will be docketed at the FOIA Office and processed in accordance with the procedures in §§ 1206.603 and 1206.604, with any fee chargeable being handled in accordance with § 1206.601(c).

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

### § 1206.603 Procedures and time limits for initial determinations.

(a) Except as provided in § 1206.608, an initial determination on a request for an agency record, addressed in accordance with § 1206.601(a) or made in person at a NASA FOIA Office, shall be made, and the requester shall be sent notification thereof, within ten working days after receipt of the request, as required by 5 U.S.C. 552(a)(6).

(b) An initial determination on a request for an agency record by mail not addressed in accordance with § 1206.601(a) shall be made, and the requester shall be sent notification thereof, within ten working days after the correspondence is recognized as a request for an agency record under the ''Freedom of Information Act'' and received by the appropriate NASA FOIA Office. With respect to such a request, unless an initial determination can reasonably be made within ten working days of the original receipt, the request will be promptly acknowledged and the requester notified of the date the request was received at that FOIA Office and that an initial determination on the request will be made within ten working days of that date.

(c) If it is determined that the requested record (or portion thereof) will be made available, and if the charges are under $250, NASA will either send a copy of the releasable record and a bill for the fee or send the initial determination and a bill for the fee to the requester. In the latter case the documents will be released when the fee is received. If the fee chargeable is over $250, a request for payment of the fee will always be sent with the initial determination, and the records will be mailed only upon receipt of payment. When records are sent before payment is received, the fact that interest will be charged from the 31st day after the day of the response shall be stated in the response. The date of the mailing of an initial determination, with or without the record(s), shall be deemed to satisfy the time limit for initial determinations.

(d) Any notification of an initial determination that does not comply fully with the request for an agency record shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requestor of the right to appeal to the Administrator, or the Inspector General, as appropriate, under § 1206.605.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

### § 1206.604 Request for records which exist elsewhere.

(a) If a request for an agency record is received by an FOIA Office not having cognizance of the record (for example, where a request is submitted to one NASA installation or Headquarters and the requested record exists only at another NASA installation), the FOIA Office receiving the request shall promptly forward it to the NASA FOIA Office having cognizance of the record requested. That installation shall acknowledge the request and inform the requester that an initial determination on the request will be sent within ten working days from the date of receipt by such installation.

(b) If a request is received for agency records which exist at two or more installations, the FOIA Office receiving the request shall undertake to comply with the request, if feasible, or to forward the request (or portions thereof) promptly to a more appropriate installation for processing. The requester shall be kept informed of the actions taken to respond to the request.

(c) If a request is received by a NASA FOIA Office for a record of another agency, the requester shall promptly be informed of that fact, and the request shall be returned to the requester, with advice as to where the request should be directed.

[54 FR 49750, Dec. 1, 1989]

### §1206.605 Appeals.

(a) A member of the public who has requested an agency record in accordance with §1206.601 or §1206.602, and who has received an initial determination which does not comply fully with the request, may appeal such an adverse initial determination to the Administrator, or, for records as specified in §1206.504, to the Inspector General under the procedures of this section.

(b) The Appeal must:

(1) Be addressed to the Administrator, NASA Headquarters, Washington, DC 20546, or, for records as specified in §1206.504, to the Inspector General. NASA Headquarters, Washington, DC 20546.

(2) Be identified clearly on the envelope and in the letter as an ''Appeal under the Freedom of Information Act'';

(3) Include a copy of the request for the agency record and a copy of the adverse initial determination;

(4) To the extent possible, state the reasons why the requester believes the adverse initial determination should be reversed; and

(5) Be sent to the Administrator or the Inspector General, as appropriate, within 30 calendar days of the date of receipt of the initial determination.

(c) An official authorized to make a final determination may waive any of the requirements of paragraph (b) of this section, in which case the time limit for the final determination (see §1206.607(a)) shall run from the date of such waiver.

### §1206.606 Requests for additional records.

If, upon receipt of a record (or portions thereof) following an initial determination to comply with a request, the requestor believes that the materials received do not comply with the request, the requestor may elect either to request additional records under the procedures of §1206.601 or §1206.602, or to file on appeal under the procedures of §1206.605, in which case the appeal must be sent to the Administrator, or to the Inspector General, in the case of records as specified in §1206.504, within 30 days of receipt of the record (or portions thereof), unless good cause is shown for any additional delay.

### §1206.607 Actions on appeals.

(a) Except as provided in §1206.608, the Administrator or designee, or in the case of records as specified in §1206.504, the Inspector General or designee, shall make a final determination on an appeal and notify the requestor thereof, within 20 working days after the receipt of the appeal.

(b) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available promptly to the requester, as provided in the final determination.

(c) If the final determination sustains in whole or in part an adverse initial determination, the notification of the final determination shall:

(1) Explain the basis on which the record (or portions thereof) will not be made available:

(2) Include the name and title of the person making the final determination;

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552(a)(4); and

(4) Enclose a copy of 5 U.S.C. 552(a)(4).

### §1206.608 Time extensions in unusual circumstances.

(a) In ''unusual circumstances'' as that term is defined in §1206.101(f), the time limits for an initial determination (see §§1206.603 and 1206.604) and for a final determination (see §1206.607) may be extended, but not to exceed a total of ten working days in the aggregate in the processing of any specific request for an agency record.

(b) If an extension of time under this section would be required, the requester shall be promptly notified of the reasons therefor and the date when a determination will be sent.

(c) If a record described in a request cannot be located within the ten-working-day time limit for an initial determination, after consultation with a professional NASA employee who is familiar with the subject area of the request, that fact normally will justify an initial determination that the record requested cannot be identified or located, rather than a decision that an extension of time under this section would be appropriate.

(d) In exceptional circumstances, if it would be impossible to complete a search for or review of agency records within the ten-working-day period for an initial determination, an official authorized to make an initial determination or his designee may seek an extension of time from the requester. If such an extension of time can be agreed upon, that fact should be clearly documented and the initial determination made within the extended time period; if not, an initial determination that the record cannot be identified or located, or reviewed, within the ten-working-day time limit shall be made under § 1206.603.

**§ 1206.609 Litigation.**

In any instance in which NASA is sued in connection with a request for an agency record under this part, the matter shall promptly be referred to the General Counsel together with a report on the details and status of the request. In such a case, if a final determination with respect to the request has not been made, such a determination shall be made as soon as possible, under procedures prescribed by the General Counsel in each case.

**§ 1206.610 Notice to submitters of commercial information.**

(a) *General policy.* Upon receipt of a request for commercial information pursuant to the Freedom of Information Act, the National Aeronautics and Space Administration shall provide the submitter with notice of the request in accordance with the requirements of this section.

(b) *Notice to submitters.* Except as provided in paragraph (g) or (h) of this section, the agency shall make a good faith effort to provide a submitter with prompt notice of a request appearing to encompass its commercial information whenever required under paragraph (c) of this section. Such notice shall identify the commercial information requested and shall inform the submitter of the opportunity to object to its disclosure in accordance with paragraph (d) of this section. If the submitter would not otherwise have access to the document that contains the information, upon the request of the submitter, the agency shall provide access to, or copies of, the records or portions thereof containing the commercial information. This notice shall be provided in writing upon the request of the submitter. Whenever the agency provides notice pursuant to this section, the agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

(c) *When notice is required.* The agency shall provide a submitter with notice of a request whenever the information is subject to an understanding of confidentiality between the agency and the submitters, or the agency has reason to believe that the information constitutes commercial information.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the agency shall afford a submitter a reasonable period within which to provide the agency with a detailed statement of any objection to disclosure. This period shall not exceed 10 working days from the date after which the agency can reasonably assume receipt of notice by the submitter, unless the submitter provides a reasonable explanation justifying additional time to respond. If the agency does not receive a response from the submitter within this period, the agency shall proceed with its review of the information and initial determination. The submitter's response shall include all bases, factual or legal, for withholding any of the information pursuant to Exemption 4. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. Whenever the agency decides to disclose commercial information over the objection of a submitter, the agency shall forward to the submitter a written statement which shall include:

(1) A brief explanation as to why the agency did not agree with any objections;

(2) A description of the commercial information to be disclosed, sufficient to identify the information to the submitter; and

(3) A date after which disclosure is expected. Such notice of intent to disclose shall be forwarded a reasonable number of working days prior to the date specified in paragraph (e)(3) of this section. A copy of this statement shall be forwarded to the requester at the same time, unless the description required by paragraph (e)(2) of this section would constitute a premature release, in which case the description shall be appropriately redacted and the requester so advised.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of commercial information covered by paragraph (c) of this section, the agency shall promptly notify the submitter. Whenever a submitter brings suit against the agency in order to prevent disclosure of commercial information, the agency shall promptly notify the requester.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The information has been published or otherwise made available to the public;

(2) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(3) The submitter has received notice of a previous FOIA request which encompassed the information requested in the later request, and the agency intends to withhold information in the same manner as in the previous FOIA request;

(4) Upon submitting the information or within a reasonable period thereafter, (i) the submitter reviewed its information in anticipation of future requests pursuant to the FOIA, (ii) provided the agency a statement of its objections to disclosure consistent with that described in paragraph (d) of this section, and (iii) the agency intends to release information consistent with the submitter's objections; or

(5) Notice to the submitter may disclose information exempt from disclosure pursuant to 5 U.S.C. 552(b)(7).

(h) An additional limited exception to the notice requirements of this section, to be used only when all of the following exceptional circumstances are found to be present, authorizes the agency to withhold information which is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice:

(1) The agency would be required to provide notice to over 10 submitters, in which case, notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification;

(2) Absent any response to the published notice, the agency determines that if it provided notice as is otherwise required by paragraph (c) of this section, it is reasonable to assume that the submitter would object to disclosure of the information based on Exemption 4; and,

(3) If the submitter expressed the anticipated objections, the agency would uphold those objections.

This exemption shall be used only with the approval of the Chief Counsel of the Field Installation, the Attorney-Advisor to the Inspector General, or the Associate General Counsel responsible for responding to the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

[54 FR 13518, Apr. 4, 1989, as amended at 54 FR 49750, Dec. 1, 1989]

## Subpart 7—Search, Review, and Duplication Fees

### §1206.700 Schedule of fees.

The fees specified in this section shall be charged for searching for, reviewing, and/or duplicating agency records made available in response to a request under this part.

(a) *Copies.* For copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.10 per copy of each page. For copies of oversize documents, such as maps, charts, etc., $0.15 for each reproduced copy per square foot. These charges for copies include the time spent in duplicating the documents. For copies of still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the full direct cost to NASA of reproducing or copying the record.

(b) *Clerical searches.* For each one quarter hour spent by clerical personnel in searching for an agency record in response to a request under this part, $2.25.

(c) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent by such higher level personnel in searching for a requested record, $4.50.

(d) *Review of records.* For commercial use requests only, where time is spent reviewing to determine whether they are exempt from mandatory disclosure, a charge may be made at the rate for each one quarter hour spent by an attorney, $6.25. No charge shall be made for the time spent in resolving general legal or policy issues regarding the application of exemptions. This charge will only be assessed the first time NASA reviews a record and not at the administrative appeal level.

(e) *Computerized records.* Because of the diversity in the types and configurations of computers which may be required in responding to requests for agency records maintained in whole or in part in computerized form, it is not feasible to establish a uniform schedule of fees for search and printout of such records. In most instances, records maintained in computer data banks are available also in printed form and the standard fees specified in paragraph (a) of this section shall apply. If the request for an agency record required to be made available under this part requires a computerized search or printout, the charge for the time of personnel involved shall be at the rates specified in paragraphs (b) and (c) of this section. The charge for the computer time involved and for any special supplies or materials used, shall not exceed the direct cost to NASA. This charge may be as high as $125.00 per quarter hour. Before any computer search or printout is undertaken in response to a request for an agency record, the requester shall be notified of the applicable unit costs involved and the total estimated cost of the search and/or printout.

(f) *Other search and duplication costs.* Reasonable standard fees, other than as specified in paragraphs (a) through (e) of this section, may be charged for additional direct costs incurred in searching for or duplicating an agency record in response to a request under this part. Charges which may be made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(g) *Charges for special services.* Complying with requests for special services such as those listed in (g)(1), (2), and (3) of this section is entirely at the discretion of NASA. Neither the FOIA nor its fee structure cover these kinds of services. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(3) Packaging and mailing bulky records that will not fit into the largest envelope carried in the supply inventory.

(h) *Unsuccessful or unproductive searches.* Search charges, as set forth in paragraphs (b) and (c) of this section, may be made even when an agency record which has been requested cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request, or if located, cannot be made available under subpart 3 of this part. Ordinarily, however, fees will not be charged in such instances unless they are substantial (over $50.00) and the requester has consented to the search after having been advised that it cannot be determined in advance whether any records exist which can be made available (see § 1206.704) and that search fees will be

charged even if no record can be located and made available.

(i) *Fees not chargeable.* (1) NASA will not charge for the first 100 pages of duplication and the first 2 hours of search time (meaning manual search) except to requesters seeking documents for commercial use.

(2) If the cost to be billed to the requester is equal to or less than $5.00, no charges will be billed.

**§1206.701 Categories of requesters.**

There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When NASA receives a request for documents appearing to be for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Moreover, in the case of such a request, NASA will not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Commercial use requesters are not entitled to 2 hours of free search time nor to 100 free pages of reproduction of documents.

(b) *Educational and noncommercial scientific institition requesters.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must demonstrate that he/she meets the criteria in §1206.101(o) of this part, and his/her request must not be made for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* NASA shall charge requesters who do not fit into any of the categories mentioned in this section, fees which recover the full direct reasonable cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Moreover, requests from individuals for records about themselves located in NASA's systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction. Requesters must reasonably describe the records sought.

**§1206.702 Waiver or reduction of fees.**

The burden is always on the requester to provide the evidence to qualify him/her for a fee waiver or reduction.

(a) NASA shall furnish documents without charge or at reduced charges in accordance with 5 U.S.C. 552(a)(4)(A)(iii), provided that: (1) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) it is not primarily in the commercial interest of the requester.

(b) Where these two statutory requirements are satisfied, based upon information supplied by the requester or otherwise made known to NASA, the FOIA fee shall be waived or reduced. Where one or both of these requirements is not satisfied, a fee waiver or reduction is not warranted under the statute.

(c) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the following considerations shall be applied:

(1) Whether the subject of the requested records concerns ''the operations or activities of the government'';

(2) Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to ''public understanding''; and

(4) Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities.

(d) In determining whether disclosure of the information ''is not primarily in the commercial interest of the requester,'' the following consideration shall be applied:

(1) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(2) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

### § 1206.703 Aggregation of requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NASA has reason to believe that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NASA will aggregate any such requests and charge accordingly. NASA will consider that multiple requests made within a 30-day period were so intended, unless there is evidence to the contrary. Where the relevant time period exceeds 30 days, NASA will not assume such a motive, unless there is evidence to the contrary. In no case will NASA aggregate multiple requests on unrelated subjects from one requester.

### § 1206.704 Advance payments.

(a) NASA will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) NASA estimates or determines that the allowable charges are likely to exceed $250. NASA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee in a timely fashion (within 30 days of billing), then NASA may require the requester to pay the full amount owed plus any applicable interest as provided below (see § 1206.706(a)), or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(b) When NASA acts under paragraphs (a)(1) and (2) of this section, the administrative time limits will begin only after NASA has received the fee payments described in paragraph (a) of this section.

### § 1206.705 Form of payment.

Payment by mail shall be made by check or money order payable to the ''National Aeronautics and Space Administration'' and sent to the NASA office which processed the request.

### § 1206.706 Nonpayment of fees.

(a) *Interest to be charged.* Requesters are advised that should they fail to pay the fees assessed, they may be charged interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(b) *Applicability of Debt Collection Act of 1982 (Pub. L. 97–365).* Requesters are advised that if full payment is not received within 60 days after the billing was sent, the procedures of the Debt Collection Act may be invoked 14 CFR 1261.407–1261.409). These procedures include three written demand letters at not more than 30-day intervals, disclosure to a consumer reporting agency, and the use of a collection agency, where appropriate.

## Subpart 8—Failure to Release Records to the Public

### §1206.800 Failure to release records to the public.

(a) Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the FEDERAL REGISTER under §1206.200(a) and not so published.

(b) A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied upon, used, or cited as precedent by NASA against any member of the public only if it has been indexed and either made available or published as provided by §1206.200(b) or if the member of the public has actual and timely notice of the terms thereof.

(c) Failure to make available an agency record required to be made available under this part could provide the jurisdictional basis for a suit against NASA under 5 U.S.C. 552(a)(4)(B) through (G), which provides as follows:

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a preceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer of employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

## Subpart 9—Annual Report

### §1206.900 Requirements for annual report.

On or before March 1 of each calendar year, NASA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(a) The number of determinations made by NASA not to comply with requests for records made to the Agency under subpart 6 of this part and the reasons for each such determination;

(b) The number of appeals made by persons under subpart 6 of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under this

part, and the number of instances of participation for each;

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(B) through (G) (see §1206.800(c)), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of the current version of this part 1206 and any other rules or regulations made by NASA regarding 5 U.S.C. 552;

(f) A copy of the current fee schedule and the total amount of fees collected by NASA for making records available under this part; and

(g) Such other information as indicates efforts by NASA to administer fully this part.

# PART 1207—STANDARDS OF CONDUCT

## Subpart A—General Provisions

Sec.
1207.101 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.
1207.102 Waiver of statutory prohibition.

## Subpart B—Post-Employment Regulations

1207.201 Scope of subpart.
1207.202 Exemption for scientific and technological communications.

AUTHORITY: 5 U.S.C. 7301; 42 U.S.C. 203(c)(1).

SOURCE: 52 FR 22755, June 16, 1987, unless otherwise noted.

## Subpart A—General Provisions

### §1207.101 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

Employees of the National Aeronautics and Space Administration (NASA) should refer to the executive branch-wide Standards of Ethnical Conduct at 5 CFR part 2635, the NASA regulation at 5 CFR part 6901 which supplements the executive branch-wide standards with respect to prohibitions and prior approval requirements applicable to certain outside employment activities, the Office of Personnel Management provisions on employee responsibilities and conduct at 5 CFR part 735, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

[59 FR 49338, Sept. 28, 1994]

### §1207.102 Waiver of statutory prohibition.

(a) *Specific waiver available.* The prohibition of 18 U.S.C. 208(a) may be waived in connection with a specific matter of the type which comes under the statute if the employee makes a full disclosure in writing of the nature of the matter involved and of the financial interest relating thereto and receives, in advance of participation in such matter, a written determination that such financial interest is not so substantial as to affect the integrity of the employee's services and, therefore, that the employee may participate personally and substantially in that matter. The procedures set forth in paragraph (c) of this section will be followed in connection with granting a waiver as described in this section.

(b) *General waivers.* The prohibition of 18 U.S.C. 208(a) also may be waived by general regulation applicable to all NASA employees so as to permit an employee (including civilian and military personnel of other Government agencies regularly detailed to NASA) to participate personally and substantially in a specific matter, notwithstanding the existence of a financial interest relating to that matter, where it has been determined that such a financial interest is too remote or inconsequential to affect the integrity of the employee's governmental capacity. Such a determination has been made by the Administrator and published in the FEDERAL REGISTER with respect to the following categories of financial interest:

(1) The following exemptions apply to financial interests which are held directly by a NASA employee, or by the employee's spouse or minor child, whether jointly or individually, or by a NASA employee and the employee's partner or partners as joint assets of the partnership:

(i) Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if

the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed $5,000, and provided such stocks and securities are listed for public trading on a major stock exchange. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities. This exemption shall not apply to membership on boards or committees constituted as part of the NASA Source Evaluation Board (SEB) process unless specific written approval for such membership is obtained from the Designated Agency Ethics Official.

(ii) Ownership of bonds other than corporate bonds, regardless of the value of such interest. This exemption extends also to any financial interests that the organization whose bonds are so owned may have in other business entities.

(iii) Ownership of shares in a widely diversified mutual fund or regulated investment company regardless of the value of such interests. This exemption extends also to any financial interests that the mutual fund or investment company may have in other business entities.

(2) If a NASA employee or the employee's spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraph (b)(1)(i) of this section for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be exempt to the same extent as provided under paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, for the direct ownership of such bonds or shares.

(3) If a NASA employee is an officer, director, trustee, or employee of an educational institution, or if the employee is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interest that the institution may have in the matter through its holdings of securities issued by business entities will be exempt, provided the NASA employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

(4) If a NASA employee has continued to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which the employee is a former employee, the employee's financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan. This exemption extends also to any financial interests that the organization may have in other business activities.

(c) *Procedures for specific waiver.* (1) The written request for a waiver will describe the specific matter involved, the nature and extent of the employee's participation therein, and the exact nature and amount of financial interest relating to the specific matter.

(2) Employees who are key officials, or who are appointed under authority of section 203(c)(2)(A) (''NASA Excepted Positions'') or section 203(c)(10) (''Alien Scientists'') of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A) and 2473(c)(10)), or under 5 U.S.C. 3131 et seq. (Senior Executive Service), will forward the request to the Administrator. It shall be submitted through the appropriate Chief Counsel or General Counsel and the appropriate Director of a Field or Component Installation or Official-in-Charge of a Headquarters Office, who will transmit the request to the Administrator with comments and recommendations on the proposed waiver. The determination required by the statute will be made only by the Administrator or Deputy Administrator in the case of these employees.

(3) All other employees will forward their requests for a waiver through the appropriate Chief Counsel or General Counsel to the appropriate Director of a Field or Component Installation or Official-in-Charge of a Headquarters Office. For Headquarters employees,

the Associate Administrator for Management is authorized to make the determination required by the statute. For employees at an installation, the Directors of Field and Component Installations, and their Deputies are authorized to make the determination required by the statute. This authority may not be redelegated.

(4) A copy of waiver granted by the Director of a Field or Component Installation shall be forwarded to the Associate Administrator for Management, NASA Headquarters.

[52 FR 22755, June 16, 1987, as amended at 53 FR 4606, Feb. 17, 1988. Redesignated at 59 FR 49338, Sept. 28, 1994]

## Subpart B—Post-Employment Regulations

SOURCE: 54 FR 4003, Jan. 27, 1989; 55 FR 9250, Mar. 12, 1990, unless otherwise noted. Redesignated at 59 FR 49338, Sept. 28, 1994.

### § 1207.201 Scope of subpart.

This subpart provides guidance to former NASA government employees who are subject to the restrictions of Title V of the Ethics of Government Act of 1978, as amended, and who want to communicate scientific or technical information to NASA.

### § 1207.202 Exemption for scientific and technological communications.

(a) Whenever a former government employee who is subject to the constraints of post-employment conflict of interest, 18 U.S.C. 207, wishes to communicate with NASA under the exemption in section 207(j)(5) for the making of a communication solely for the purpose of furnishing scientific or technological information, he or she shall state to the NASA employee contracted, the following information:

(1) That he or she is a former government employee subject to the post employment restrictions of 18 U.S.C. 207 (a), (c), or (d)—specify which;

(2) That he or she worked on certain NASA programs—enumerate which; and

(3) That the communication is solely for the purpose of furnishing scientific or technological information.

(b) If the former government employee has questions as to whether the communication comes within the scientific and technological exemption, he or she should contact the General Counsel, the designated agency ethics official.

[54 FR 4003, Jan. 27, 1989; 55 FR 9250, Mar. 12, 1990. Redesignated and amended at 59 FR 49338, Sept. 28, 1994]

# PART 1208—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

EDITORIAL NOTE: For additional information, see related documents published at 50 FR 8953, March 5, 1985, 52 FR 18768, May 19, 1987, and 52 FR 45667, December 1, 1987.

### § 1208.1 Uniform Relocation Assistance and Real Property Acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 24 CFR part 24.

[52 FR 48017, Dec. 17, 1987 and 54 FR 8912, Mar. 2, 1989]

# PART 1209—BOARDS AND COMMITTEES

## Subparts 1–2 [Reserved]

## Subpart 3—Contract Adjustment Board

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1209.300 Scope.
1209.301 Authority.
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## Subparts 1–2 [Reserved]

## Subpart 3—Contract Adjustment Board

AUTHORITY: Pub. L. 85–804 and 42 U.S.C. 2473(c)(1).

SOURCE: 51 FR 28924, Aug. 13, 1986, unless otherwise noted.

### §1209.300 Scope.

This subpart continues in effect the Contract Adjustment Board (hereinafter referred to as ''the Board'') to consider and dispose of requests for extraordinary contractual adjustments by contractors of the National Aeronautics and Space Administration (hereinafter referred to as NASA).

### §1209.301 Authority.

(a) The Act of August 28, 1958 (50 U.S.C. 1431–35) (hereinafter referred to as ''the Act''), empowers the President to authorize departments and agencies exercising functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the President deems that such action would facilitate the national defense.

(b) Executive Order No. 10789, dated November 14, 1958 (23 FR 8897), authorizes the Administrator, NASA, to exercise the authority conferred by the Act and to prescribe regulations for the carrying out of such authority.

(c) Federal Acquisition Regulation (FAR), part 50, April 1, 1985, and NASA/FAR Supplement 84–2, part 18–50, October 19, 1984, establishes standards and procedures for the disposition of requests for extraordinary contractual adjustments by NASA contractors.

### §1209.302 Establishment of Board.

The Board was established on May 15, 1961, and is continued in effect by NASA Management Instruction (NMI) 1152.5 and this regulation.

### §1209.303 Functions of Board.

(a) The Board is authorized to act for and exercise the authority of the Administrator in cases involving request by NASA contractors for extraordinary contractual adjustments under the Act. Such authority will be exercised in accordance with the standards and procedures established by the Administrator, subject to such limitations as the Administrator may prescribe.

(b) The Board shall have the power to approve, authorize or direct any action, including the modification or release of any obligations, and to make determinations and findings which are necessary or appropriate for the conduct of its functions, and may adopt such rules of procedure as it considers desirable.

(c) The concurring vote of a majority of the total Board membership shall constitute an action of the Board. Decisions of the Board shall be final but the Board may reconsider and modify, correct or reverse any Board decision previously made.

### §1209.304 Membership.

The Board will consist of a chairperson and four other members, all of whom shall be appointed by the Administrator.

### §1209.305 Legal advice and assistance.

The General Counsel of NASA shall provide the Board with all necessary advice and assistance.

## Subpart 4—Inventions and Contributions Board

AUTHORITY: 42 U.S.C. 2457(f) and 2458.

SOURCE: 51 FR 3945, Jan. 31, 1986, unless otherwise noted.

### §1209.400 Scope.

This subpart describes the functions, authority, and membership of the NASA Inventions and Contributions Board (hereafter referred to as ''the Board'').

**§ 1209.401 Establishment.**

Pursuant to the authority of the National Aeronautics and Space Act of 1958 as amended (42 U.S.C. 2457(f) and 2458) and the Government Employees Incentive Awards Act of 1954 (5 U.S.C. 4501–6), the Board was established on December 4, 1958, and is further continued in effect by this subpart 4.

**§ 1209.402 Responsibilities.**

(a) *Waiver of rights in inventions.* Under the authority of 42 U.S.C. 2457(f) and pursuant to 14 CFR part 1245 subpart 1 (NASA Management Instruction 5109.2), the Board will receive and evaluate petitions for waiver of rights of the United States to inventions, accord each interested party an opportunity for a hearing, and transmit to the Administrator its findings of fact as to such petitions and its recommendations for action to be taken with respect thereto.

(b) *Patent licenses.* Under the authority of 35 U.S.C. 207(b) and pursuant to 14 CFR part 1245 subpart 2 (NASA Management Instruction 5109.3), the Board will accord a licensee or applicant for license an opportunity for a hearing with respect to an appeal which raises a dispute over material facts and will be responsible for making findings of fact and forwarding them to the Administrator or designee.

(c) *Monetary awards for scientific and technical contributions.* (1) Under the authority of 42 U.S.C. 2458 and pursuant to 14 CFR part 1240, the Board will receive and evaluate each application for award for any scientific or technical contribution to the Administration which is determined to have significant value in the conduct of aeronautical and space activities, will accord each applicant an opportunity for a hearing upon such application, and will then transmit to the Administrator its recommendation as to the amount of the monetary award and terms of the award, if any, to be made for such contribution.

(2) If the contribution is made by a Government employee, the Board is also authorized to consider such contribution for award under the incentive awards program and to make an award, if any, on its own cognizance, up to the amount of $10,000 in accordance with NASA supplements to Chapter 451 of the Federal Personnel Manual covering this subject.

[51 FR 3945, Jan. 31, 1986, as amended at 59 FR 35623, July 13, 1994]

**§ 1209.403 Organizational location.**

The Board is established within the Office of Policy Coordination and International Relations.

[59 FR 35623, July 13, 1994]

**§ 1209.404 Membership.**

(a) The Board will consist of a full-time Chairperson and at least six members appointed by the Administrator from within NASA. One of the members will be designated by the Chairperson as Vice-Chairperson. The Chairperson is responsible directly to the Administrator.

(b) The Chairperson of the Board is appointed for an unlimited period. All other Board members normally will be appointed initially for a period of 3 years. The Chairperson is authorized to extend the initial appointment of any Board member for an additional period of service. If a member resigns or is otherwise unable to participate in the Board's activities, a replacement may be appointed for the remainder of the uncompleted term and, with the approval of the Chairperson, may be appointed for a full 3-year term upon the expiration of the original term. This procedure will provide the Board with a continual infusion of new members with a variety of professional backgrounds and interests. Duties performed by the members of the Board will be in addition to their regular duties.

(c) The Chairperson is authorized to:

(1) Assemble the Board as required to discharge the duties and responsibilities of the Board;

(2) Establish such panels as may be considered necessary to discharge the responsibilities and perform the functions of the Board; and

(3) Issue implementing rules and procedures, and take such other actions as are necessary to perform the Board's functions.

### §1209.405 Supporting services.

(a) The staff of the Board is established to assist the Board in discharging its functions and responsibilities. The staff will:

(1) Prepare analyses of petitions for waiver of rights to inventions for the consideration of the Board;

(2) Prepare evaluation of proposed awards;

(3) Document Board actions; and

(4) Perform such other functions as may be required.

(b) A full-time director of the staff will serve as a nonvoting member of the Board, and will direct the activities of the staff of the Board.

(c) The director of the staff of the Board will report to the Chairperson of the Board.

## PART 1210—DEVELOPMENT WORK FOR INDUSTRY IN NASA WIND TUNNELS

Sec.

1210.1 Introduction.
1210.2 General classes of work.
1210.3 Priorities and schedules.
1210.4 Company projects.
1210.5 Government projects.
1210.6 Test preparation and conduct.

AUTHORITY: 50 U.S.C. 511–515, 42 U.S.C. 2473(c)(5) and (6).

SOURCE: 51 FR 34083, Sept. 25, 1986, unless otherwise noted.

### §1210.1 Introduction.

(a) *Authority.* The regulations, as they apply to the Unitary Wind Tunnel Plan facilities, are promulgated under authority of the Unitary Wind Tunnel Plan Act of 1949, as amended, codified at 50 U.S.C. 511–515. This statute states ''The facilities authorized * * * shall be operated and staffed by the National Aeronautics and Space Administration but shall be available primarily industry for testing experimental models in connection with the development of aircraft and missiles. Such tests shall be scheduled and conducted in accordance with industry's requirements, and allocation of laboratory time shall be made in accordance with the public interest, with proper emphasis upon the requirements of each military service and due consideration of civilian needs.''

(b) *Unitary wind tunnel plan facilities.* The unitary wind tunnel plan facilities are the Ames Research Center 11- by 11-foot wind tunnel, 9- by 7-foot wind tunnel, and 8- by 7-foot wind tunnel; the Langley Research Center 4- by 4-foot high Mach number test section and the 4- by 4-foot low Mach number test section; and the Lewis Research Center 10- by 10-foot wind tunnel. These wind tunnels are operated by NASA for industry, NASA, the Department of Defense, and other Government agency projects.

(c) *National aeronautical facilities.* The national aeronautical facilities include the National Transonic Facility (NTF) at Langley Research Center and the National Full-Scale Aerodynamic Complex, consisting of the 40- by 80-foot and the 80- by 120-foot wind tunnels and related support facilities at Ames Research Center. These facilities are operated by NASA for industry, NASA, the Department of Defense, and other Government agency projects.

(d) *All other wind tunnels.* All other NASA wind tunnels will be used primarily for NASA research. However, all of these wind tunnels may be used for industry work when it is in the public interest either in joint programs with NASA or on a fee basis.

(e) *NASA policy.* All the projects to be performed in any of the NASA wind tunnels must be appropriate to the facility.

### §1210.2 General classes of work.

(a) *Company projects.* Includes work for industry on:

(1) Projects which are neither under contract nor supported by a letter of intent from a Government agency; and

(2) Company desired tests which are related to a project which is either under contract with or supported by a letter of intent from a Government agency, but are beyond the scope of the tests requested by the Government agency.

(3) A fee will be charged for company projects.

(b) *Government projects.* Includes work for industry on projects which are either under contract with or supported by a letter of intent from a Government agency. The work must be requested by the Government agency. No

fee will be charged for Government projects.

(c) *United States/foreign industry consortium projects.* This involves U.S. companies, which have formed a consortium or any other type of association with foreign companies, that desire tests on aerospace projects of joint or foreign interest. An application for work for such a consortium shall disclose the foreign interest in or anticipated foreign benefit from tests to be conducted and shall first be reviewed by the Director, International Affairs Division, for consistency with current U.S. foreign policy and for compatibility with section 102 of the National Aeronautics and Space Act of 1958, as amended, prior to a final decision being reached on the application. A fee will be charged for these consortium projects unless, in these review procedures, it is determined that Government agency cooperative sponsorship warrants a non-fee arrangement.

(d) *Foreign company projects.* Foreign company requests for wind tunnel use that are not related to U.S. Government or U.S. industry interests or programs will generally not be granted and will in no event be granted prior to a review, as required in paragraph (c) of this section, by the Director, International Affairs Division.

### § 1210.3 Priorities and schedules.

(a) *Priorities.* Unitary wind tunnels shall be available primarily to industry for development work. However, allocations of wind tunnel time shall be in accordance with the public interests, with due consideration to the requirements of the military services, civilian needs, and NASA research. Research work shall have priority in all other NASA facilities.

(b) *Schedules.* Schedules showing the allocation of testing time for Government projects and for company projects for unitary wind tunnels and other major wind tunnels will be established by the appropriate center.

### § 1210.4 Company projects.

(a) *Initiation of company projects.* Company projects will be initiated by a letter to the Center Director followed by a conference between company and NASA representatives at the center having responsibility for the facility proposed for the project. The company representatives will be required to explain the technical need for the project and why the NASA facility is required, as well as to define the extent of the test program, model and equipment requirements, and schedule. The center shall maintain a file of all company requests and their disposition. The company will be required to provide a Safety Analysis Report (SAR) describing potential hazards that the company test program, model, and equipment may present to NASA facilities and personnel, and other documentation required by the facility management to assure that safety requirements are met.

(b) *Scheduling of tests.* In scheduling time for company projects, the responsible NASA center will consider the merits of all projects, including government, company, and NASA research work relative to the national interest and priorities specified in § 1210.3. Every reasonable attempt will be made to accommodate technically justifiable projects on as timely a basis as possible.

(c) *Fees for company projects.* The policy on charges for the use of NASA facilities is explained in NASA Management Instruction 9080.1, ''Review, Approval, and Imposition of User Charges.'' The fee imposed for a company project will cover all direct and indirect costs to NASA for the wind tunnel test.

(1) *Occupancy time charge.* (i) The occupancy time will be computed from the start of installation of the test article in the wind tunnel test section through the time that the test article is removed from the test section and the test section is restored to its original condition.

(ii) The occupancy time rate will be determined in accordance with NASA Management Instruction 9080.1.

(2) *Energy/Fuel.* The charge for energy/fuel will be determined from the energy/fuel consumed during the tests and the actual cost to NASA.

(3) *Data reduction.* The cost of data reduction and the data report will include labor, materials, computational costs, and appropriate indirect charges

in accordance with NASA Management Instruction 9080.1.

(4) *Cancellation of scheduled wind tunnel time.* Upon determination of a test schedule by the representatives of the company and of NASA, it becomes the responsibility of the company to meet this schedule. A project may be cancelled by the company without charge on 60 days' notice if succeeding projects are ready for testing and can be moved into the company's previously scheduled time. In the event subsequently scheduled work cannot be scheduled in lieu of the company's work, when cancelled with less than 60 days' notice, the company shall be required to pay the occupancy time charge for the scheduled test period or for the period the facility test section is idle due to the cancellation, whichever results in the smaller charge. Curtailment of a project underway before the end of the scheduled test period may be made by the company. In this event, the company shall be required to pay the occupancy charge for the time used plus the unused scheduled time or for the idle time of the test section, whichever is the smaller.

(5) *High-power requirements.* Unavailability of adequate power or economic considerations may, on occasion, cause delay or cancellation of high-powered test runs. The company shall cooperate with the facility staff in the scheduling of low-powered runs during periods when large blocks of power are unavailable. However, should rescheduling of test runs to accommodate power shortages be impractical, occupancy time charge credits will be made for time lost arising from such shortages. The basis for these credits, which will also be made for delays due to breakdown or malfunction of Government-furnished equipment or instrumentation, or due to other reasons beyond the control of the company, will be determined by each center. For example, the test period allotted for the program may be extended to offset delays in lieu of a refund.

(d) *Test data transmittal.* The basic data for company projects will be transmitted to the requesting company without detailed analysis but with the necessary description of methods and techniques employed to permit proper interpretation of the data.

(e) *Proprietary rights.* In order to protect the trade secrets of companies, NASA will generate one set of final results, which will become the property of the company and be promptly transmitted to the company. If, subsequently, there is need to review the results, it will be the responsibility of the company to provide the NASA center with copies of the resulting data. Upon completion of the review, the data will be returned to the company. Should the company desire to maintain its trade secret rights in the data during the loan period, it should mark the data with a notice stating that the data shall not be used or disclosed other than for review purposes without prior written permission of the company. NASA, in turn, will protect that data covered by the notice which is protected under the law as a trade secret.

(f) *Test preparation and conduct.* See §1210.6.

### §1210.5 Government projects.

(a) *Initiation of Government projects.* Government projects shall be initiated through a conference of representatives from the contracted company, the sponsoring Government agency, and the staff of the NASA center having responsibility for the facility proposed for the project. The purpose of the conference will be to establish the technical basis for the project and why the NASA facility is required as well as to define the extent of the test program, model and instrumentation requirements, and schedule. Upon concurrence of the NASA staff, the sponsoring Government agency will submit a letter of request to the Center Director. A Safety Analysis Report (SAR) will be required, describing the potential hazards that the project test program, model, and equipment may present to NASA facilities and personnel, as well as other documentation required by the facility management to assure that safety requirements have been met.

(b) *Scheduling of tests.* In scheduling time for Government projects, the responsible NASA center will consider the merits of all projects, including

Government, company, and NASA research work relative to the national interest and priorities specified in § 1210.3. Every reasonable attempt will be made to accommodate technically justifiable projects on a timely basis.

(c) *Test data transmittal.* The basic data for Government projects, without detailed analysis but with the necessary description of methods and techniques employed to permit the proper interpretation of the data, will be transmitted to the company for whom the tests were made and to the sponsoring Government agency. Further disclosure by NASA of the test results will be made only with the prior concurrence of the sponsoring Government agency.

### § 1210.6 Test preparation and conduct.

(a) *Programming by user.* The user will be given the greatest possible freedom within the objectives of the scheduled program to obtain the quality and quantity of information desired, to determine the sequence and number of test runs to be made, and to make modifications to the program arising from the results obtained, subject to requirements of safety, energy conservation, practicability, and the total time assigned.

(b) *Model systems criteria.* Information will be furnished for each facility on the permissible size of model, standard balances, safety margins to be used in the design of models, model mounting details, and other pertinent factors. All model systems criteria required by the facility for safety consideration including the necessary drawings and stress analyses of the articles to be tested will be furnished at a time specified by the facility staff for their use in preparing for the test.

(c) *Instrumentation.* Each facility will provide basic instrumentation suitable for the test range of the respective facility and computing equipment for the reduction of test data. If the basic instrumentation furnished by the facility does not meet these test requirements, the user will provide suitable instrumentation which will be calibrated by the facility staff to ensure accuracy of measurement. This Instrumentation will be made available sufficiently in advance of the test date to accomplish the calibration. Serious delays arising from inaccuracies in user supplied instrumentation, if occurring during the scheduled test period, may result in reassignment of the position of the tests on the facility schedule. Detailed specifications and arrangements for special instrumentation will be established by mutual agreement. The user will be required to furnish all information necessary to prepare the data reduction software program at a date specified by the facility staff.

(d) *Test program.* All tests will be conducted under NASA supervision and by NASA personnel or by NASA support service contractor personnel unless approved otherwise by the facility manager. The test program shall be approved by NASA personnel before the test project is accepted. By agreement between the user (company representatives or the requesting agency) and the center staff, changes in the test program may be made within the objectives of the scheduled program if time is available. When tests are not totally conducted by NASA personnel or by NASA support service contractor personnel, the NASA Field Installation Safety Officer shall verify that the user personnel are fully cognizant of facility safety problems and operations. A current SAR on the facility shall be available to the user personnel for review.

(e) *Test data.* The NASA staff will be responsible for obtaining all test data, its reduction to suitable coefficient form, and the accuracy of the final data, but NASA will assume no responsibility for the interpretation of the data by others. Transmittal of the data will be made as soon as the test is completed and the data are deemed releasable by NASA. For company projects, the data will be transmitted as directed by the company. The data for Government projects will be transmitted simultaneously to the sponsoring Government agency and the contractor (if applicable), unless otherwise directed by the sponsoring agency.

(f) *Shops and office space.* During the conduct of user testing, NASA will provide desk space and at least limited use of the shop facilities to the user whose projects are under test.

(g) *User furnished personnel.* User personnel associated with each project will be agreed upon between the user and facility staff prior to the test.

# PART 1211 [RESERVED]

# PART 1212—PRIVACY ACT—NASA REGULATIONS

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AUTHORITY: The National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473; the Privacy Act of 1974, as amended, 88 Stat. 1896, 5 U.S.C. 552a.

SOURCE: 57 FR 4928, Feb. 11, 1992, unless otherwise noted.

## Subpart 1212.1—Basic Policy

### §1212.100 Scope and purpose.

This part 1212 implements the Privacy Act of 1974, as amended (5 U.S.C. 552a). It establishes procedures for individuals to access their Privacy Act records and to request amendment of information in records concerning them. It also provides procedures for administrative appeals and other remedies. This part applies to systems of records located at or under the cognizance of NASA Headquarters, NASA Field Installations, and NASA Component Installations, as defined in part 1201 of this chapter.

### §1212.101 Definitions.

For the purposes of this part, the following definitions shall apply in addition to definitions contained in the Privacy Act of 1974, as amended (5 U.S.C. 552a):

(a) The term *individual* means a living person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) The term *maintain* includes maintain, collect, use or disseminate.

(c) The term *record* means any item, collection, or grouping of information about an individual including, but not limited to, education, financial transactions, medical history, and criminal

or employment history, and that contains a name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) The term *system of records* means a group of any records from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(e) The term *system manager* means the NASA official who is responsible for a system of records as designated in the system notice of that system of records published in the FEDERAL REGISTER. When a system of records includes portions located at more than one NASA Installation, the term *system manager* includes any subsystem manager designated in the system notice as being responsible for that portion of the system of records located at the respective Installation.

(f) The term *systems notice* means, with respect to a system of records the publication of information in the FEDERAL REGISTER upon establishment or revision of the existence and character of the system of records. The notice shall include that information as required by 5 U.S.C. 552a(e)(4).

(g) The term *routine use* means, with respect to the disclosure of a record, the use of the record for a purpose which is compatible with the purpose for which it was collected.

(h) The term *NASA employee* or *NASA official*, particularly for the purpose of § 1212.203(g) related to the disclosure of a record to those who have a need for the record in the performance of their official duties, includes employees of a NASA contractor which operates or maintains a NASA system of records for or on behalf of NASA.

(i) The term *NASA information center* refers to information centers established to facilitate public access to NASA records under part 1206 of this chapter. See § 1206.401 of this chapter for the address of each NASA information center.

## Subpart 1212.2—Access to Records

### § 1212.200 Determining existence of records subject to the Privacy Act.

The procedures outlined in this subpart 1212.2 apply to the following types of requests under the Privacy Act made by individuals concerning records about themselves:

(a) To determine if information on the requester is included in a system of records;

(b) For access to a record; and

(c) For an accounting of disclosures of the individual's Privacy Act records.

### § 1212.201 Requesting a record.

(a) Individuals may request access to their Privacy Act records, either in person or in writing.

(b) Individuals may also authorize a third party to have access to their Privacy Act records. This authorization shall be in writing, signed by the individual and contain the individual's address as well as the name and address of the representative being authorized access. The identities of both the subject individual and the representative must be verified in accordance with the procedures set forth in § 1212.202 of this part.

(c)(1) Requests must be directed to the appropriate system manager, or, if unknown, to the NASA Headquarters or Field Installation Information Center. The request should be identified clearly on the envelope and on the letter as a ''Request Under the Privacy Act.''

(2) Where possible, requests should contain the following information to ensure timely processing:

(i) Name and address of subject.

(ii) Identity of the system of records.

(iii) Nature of the request.

(iv) Identifying information specified in the applicable system notice to assist in identifying the request, such as location of the record, if known, full name, birth date, etc.

(d) NASA has no obligation to comply with a nonspecific request for access to information concerning an individual, e.g., a request to provide copies

of ''all information contained in your files concerning me,'' although a good faith effort will be made to locate records if there is reason to believe NASA has records on the individual. If the request is so incomplete or incomprehensible that the requested record cannot be identified, additional information or clarification will be requested in the acknowledgement, and assistance to the individual will be offered as appropriate.

(e) If the information center receives a request for access, the Information Center will record the date of receipt and immediately forward the request to the responsible system manager for handling.

(f) Normally, the system manager shall respond to a request for access within 10 work days of receipt of the request and the access shall be provided within 30 work days of receipt.

(1) In response to a request for access, the system manager shall:

(i) Notify the requester that there is no record on the individual in the system of records and inform the requester of the procedures to follow for appeal (See §1212.4);

(ii) Notify the requester that the record is exempt from disclosure, cite the appropriate exemption, and inform the requester of the procedures to follow for appeal (See §1212.4);

(iii) Upon request, promptly provide copies of the record, subject to the fee requirements (§1212.204); or

(iv) Make the individual's record available for personal inspection in the presence of a NASA representative.

(2) Unless the system manager agrees to another location, personal inspection of the record shall be at the location of the record as identified in the system notice.

(3) When an individual requests records in a system of records maintained on a third party, the request shall be processed as a Freedom of Information Act (FOIA) request under 14 CFR part 1206. If the records requested are subject to release under FOIA (5 U.S.C. 552(b)), then a Privacy Act exemption may not be invoked to deny access.

(4) When an individual requests records in a system of records maintained on the individual, the request shall be processed under this part. NASA will not rely on exemptions contained in FOIA to withhold any record which is otherwise accessible to the individual under this part.

### §1212.202 Identification procedures.

(a) The system manager will release records to the requester or representative in person only upon production of satisfactory identification which includes the individual's name, signature, and photograph or physical description.

(b) The system manager will release copies of records by mail only when the circumstances indicate that the requester and the subject of the record are the same. The system manager may require that the requester's signature be notarized or witnessed by two individuals unrelated to the requester.

(c) Identity procedures more stringent than those required in this section may be prescribed in the system notice when the records are medical or otherwise sensitive.

### §1212.203 Disclosures.

(a) The system manager shall keep a disclosure accounting for each disclosure to a third party of a record from a system of records. This includes records disclosed pursuant to computer matching programs (See NASA Management Instruction (NMI) 1382.18).

(b) Disclosure accountings are not required but are recommended for disclosures made:

(1) With the subject individual's consent; or

(2) In accordance with §1212.203(g) (1) and (2), below.

(c) The disclosure accounting required by paragraph (a) of this section shall include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the recipient person or Agency.

(d) The disclosure accounting shall be retained for at least 5 years after the disclosure or for the life of the record, whichever is longer.

(e) The disclosure accounting maintained under the requirements of this section is not itself a system of records.

(f) Records in a NASA system of records may not be disclosed to third parties without the consent of the subject individual. However, in consonance with 5 U.S.C. 552a(b), disclosure may be authorized without consent, if disclosure would be:

(1) To an officer or employee of NASA who has a need for the record in the performance of official duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552) and part 1206 of this chapter;

(3) For a routine use described in the system notice for the system of records;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;

(5) To a recipient who has provided NASA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation by the Archivist of the United States or the Archivist's designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to NASA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress or, to the extent the matter is within its jurisdiction, any committee or subcommittee, or any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of the Comptroller's authorized representative(s), in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

### § 1212.204 Fees.

(a) Fees will not be charged for:

(1) Search for a retrieval of the requesting individual's records;

(2) Review of the records;

(3) Making a copy of a record when it is a necessary part of the process of making the record available for review;

(4) Transportation of the record(s);

(5) Making a copy of an amended record to provide evidence of the amendment; or

(6) Copies of records if this is determined to be in the best interest of the Government.

(b) Fees for the duplication of records will be assessed in accordance with § 1206.700(a) of this chapter.

(c) Where it appears that duplication fees chargeable under this section will exceed $25, the requester shall be provided an estimate of the fees before copies are made. Where possible, the requester will be afforded the opportunity to confer with Agency personnel in a manner which will reduce the fees, yet still meet the needs of the requester.

(d) Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of part or all of the anticipated fee may be required.

### § 1212.205 Exceptions to individual's rights of access.

(a) The NASA Administrator has determined that the systems of records set forth in § 1212.501 are exempt from disclosure to the extent provided therein.

(b) *Medical records.* Normally, an individual's medical record shall be disclosed to the individual, unless the system manages, in consultation with a medical doctor, determines that access

to the record could have an adverse effect upon the individual. In this case, NASA shall allow access to the record by a medical doctor designated in writing by the requesting individual.

(c) *Test and qualification materials.* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process and copies of certificates of eligibles and other lists of eligibles, the disclosure of which is proscribed by 5 CFR 300.201, shall be removed from an individual's record containing such information before granting access.

(d) *Information compiled for civil actions or proceedings.* Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

## Subpart 1212.3—Amendments to Privacy Act Records

### §1212.300 Requesting amendment.

Individuals may request that NASA amend their records maintained in a NASA system of records. This request shall be in writing, addressed to the appropriate system manager, and shall contain the following:

(a) A notation on the envelope and on the letter that it is a ''Request for Amendment of Individual Record under the Privacy Act;''

(b) The name of the system of records;

(c) Any information necessary to retrieve the record, as specified in the system notice for the system of records (See §1212.201(c)(2));

(d) A description of that information in the record which is alleged to be inaccurate, irrelevant, untimely, or incomplete; and,

(e) Any documentary evidence or material available to support the request.

### §1212.301 Processing the request to amend.

(a) Within 10 work days of receipt by NASA of a request to amend a record, the system manager shall provide the requester with a written determination or acknowledgement advising when action may be taken.

(b) When necessary, NASA may utilize up to 30 work days after receipt to provide the determination on a request to amend a record.

(c) If the request for amendment is denied, the determination shall explain the reasons for the denial and inform the requester of the procedures to follow for appeal (See §1212.4)).

### §1212.302 Granting the request to amend.

NASA shall make the requested amendment clearly on the record itself and all information deemed to be inaccurate, irrelevant, or untimely shall be deleted and destroyed. Incomplete information shall either be amended or deleted and destroyed. The individual shall then be informed in writing that the amendment has been made. If the inaccurate, irrelevant, untimely, or incomplete portion of the record has previously been disclosed, then the system manager shall notify those persons or agencies of the amended information, referencing the prior disclosures (See §1212.402).

## Subpart 1212.4—Appeals and Related Matters

### §1212.400 Appeals.

(a) Individuals may appeal to the Assistant Deputy Administrator when they:

(1) Have requested amendment of a record and have received an adverse initial determination;

(2) Have been denied access to a record; or,

(3) Have not been granted access within 30 work days of their request.

(b) An appeal shall:

(1) Be in writing and addressed to the Assistant Deputy Administrator, NASA, Washington, DC 20546;

(2) Be identified clearly on the envelope and in the letter as an ''Appeal under the Privacy Act;''

(3) Include a copy of any pertinent documents; and

(4) State the reasons for the appeal.

(c) Appeals from adverse initial determinations or denials of access must be submitted within 30 work days of the date of the requester's receipt of

the initial determination. Appeals involving failure to grant access may be submitted any time after the 30 work day period has expired (See § 1212.201(f)).

(d) A final determination on an appeal shall be made within 30 work days after its receipt by the Assistant Deputy Administrator, unless, for good cause shown, the Assistant Deputy Administrator extends such 30 work day period. Prior to the expiration of the 30 work day period, the requester shall be notified of any such extension.

(e) If a denial of a request to amend a record is upheld, the final determination shall:

(1) Explain the basis for the detail;

(2) Include information as to how the requester goes about filing a statement of dispute under the procedures of § 1212.401; and,

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552a(g).

### § 1212.401 Filing statements of dispute.

(a) A statement of dispute shall:

(1) Be in writing;

(2) Set forth reasons for the individual's disagreement with NASA's refusal to amend the record;

(3) Be concise;

(4) Be addressed to the system manager; and,

(5) Be identified on the envelope and in the letter as a ''Statement of Dispute under the Privacy Act.''

(b) The system manager shall prepare an addendum to the statement explaining the basis for NASA's refusal to amend the disputed record. A copy of the addendum shall be provided to the individual.

(c) The system manager shall ensure that the statement of dispute and addendum are either filed with the disputed record or that a notation appears in the record clearly referencing the statement of dispute and addendum so that they may be readily retrieved.

### § 1212.402 Disclosure to third parties of disputed records.

(a) The system manager shall promptly provide persons or agencies to whom the disputed portion of a record was previously disclosed and for which an accounting of the disclosure exists under the requirements of § 1212.203 of this part, with a copy of the statement of dispute and addendum, along with a statement referencing the prior disclosure. The subject individual shall be notified as to those individuals or agencies which are provided with the statement of dispute and addendum.

(b) Any subsequent disclosure of a disputed record shall clearly note the portion of the record which is disputed and shall be accompanied by a copy of the statement of dispute and addendum.

## Subpart 1212.5—Exemptions to Individuals' Rights of Access

### § 1212.500 Exemptions under 5 U.S.C. 552a(j) and (k).

(a) These provisions authorize the Administrator of NASA to exempt certain NASA Privacy Act systems of records from portions of the requirements of this regulation.

(b) The Administrator has delegated this authority to the Assistant Deputy Administrator (See § 1212.701).

(c) For those NASA systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons.

### § 1212.501 Record systems determined to be exempt.

The Administrator has determined that the following systems of records are exempt to the extent provided hereinafter.

(a) *Inspector General Investigations Case Files*—(1) *Sections of the Act from which exempted.* (i) The Inspector General Investigations Case Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e) (6), (7), (9), (10), and (11) relating to dissemination and maintenance of records, and (i) relating to

criminal penalties. This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(ii) To the extent that there may exist noncriminal investigative files within this system of records, the Inspector General Investigations Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections.

(2) *Reason for exemptions.* (i) The Office of Inspector General is an office of NASA, a component of which performs as its principal function activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(ii) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2): *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fullfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App.

(F) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(G) To prevent disclosure of law enforcement techniques and procedures.

(H) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) Records within this system of records comprised of investigatory material compiled solely for the purpose

of determining suitability or eligibility for Federal civilian employment or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(b) *Security Records System*—(1) *Sections of the Act from which exempted.* The Security Records System is exempted from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment, and information as to the categories of sources of records; and (f) relating to developing Agency rules for gaining access and making corrections.

(2) *Reason for exemption.* (i) Personnel Security Records contained in the system of records which are compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(ii) Criminal Matter Records are contained in the system of records and are exempt under the provisions of 5 U.S.C. 552a(k)(2): *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) The system of records includes records subject to the provisions of 5 U.S.C. 552(b)(1) (required by Executive order to be kept secret in the interest of national defense or foreign policy), and such records are exempt under 5 U.S.C. 552a(k)(1).

## Subpart 1212.6—Instructions for NASA Employees

### §1212.600 General policy.

In compliance with the Privacy Act and in accordance with the requirements and procedures of this regulation, NASA has an obligation to:

(a) Advise individuals, when requested, as to whether any specific system of records maintained by NASA contains records pertaining to them;

(b) Prevent records being maintained by NASA in a system of records for a specific purpose from being used or made available for another purpose without the individual's consent; and,

(c) Permit individuals to have access to information about themselves in a NASA system of records, to have a copy made, and, if appropriate under subpart 1212.3 of this part, to amend the records.

### §1212.601 Maintenance and publication requirements for systems of records.

(a) In maintaining systems of records, NASA shall:

(1) Maintain any record in a system of records for necessary and lawful purposes only, assure that the information is current and accurate for its intended use, and provide adequate safeguards to prevent misuse of the information.

(2) Maintain only information about an individual relevant and necessary to accomplish a purpose or to carry out a function of NASA authorized by law or by Executive order of the President.

(3) Maintain records used by NASA officials in making any determination about any individual with such accuracy, relevance, timeliness, and completeness reasonably necessary to assure fairness to the individual in making the determination.

(4) Maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute, by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(5) Maintain and provide access to records of other agencies under NASA's control consistent with the regulations of this part.

(b) Any system of records maintained by NASA which is in addition to or substantially different from a Governmentwide systems of records described in a systems notice published by another agency shall be regarded as a NASA system of records subject to the requirements of this part, and the NASA system notice shall include a reference to the system notice of the other agency.

(c) NASA shall provide adequate advance notice to Congress and OMB of any proposal to establish a new system of records or alter any existing system of records as prescribed by OMB Circular No. A–130, appendix I.

### §1212.602 Requirements for collecting information.

In collecting information for systems of records, the following requirements shall be met:

(a) Information shall be collected to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. Exceptions to this policy may be made under certain circumstances, such as one of the following:

(1) There is a need to verify the accuracy of the information supplied by an individual.

(2) The information can only be obtained from a third party.

(3) There is no risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned.

(4) Provisions are made to verify with the individual information collected from a third party.

(b) Each individual who is asked to supply information shall be informed of the following:

(1) The authority (whether granted by statute, or by Executive order of the President) for requesting the information;

(2) Whether disclosure is mandatory or voluntary;

(3) The intended official use of the information;

(4) The routine uses which may be made of the information, as published in the system notices;

(5) The effects, if any, on the individual of not providing all or any part of the requested information.

### § 1212.603 Mailing lists.

NASA will not sell, rent, or otherwise disclose an individual's name and address to anyone, unless otherwise specifically authorized by law.

### § 1212.604 Social security numbers.

(a) It is unlawful for NASA to deny to individuals any rights, benefits, or privileges provided by law because of the individuals' refusal to disclose their social security numbers, except where:

(1) The disclosure is required by law; or

(2) The disclosure is from a system of records in existence and operating before January 1, 1975, and was required under statute or regulation adopted before that date to verify the identity of the individual(s).

(b) Any time individuals are requested to disclose their social security numbers, NASA shall indicate whether that disclosure is mandatory or voluntary, by what authority the numbers are requested, and what uses will be made of them.

### § 1212.605 Safeguarding information in systems of records.

(a) Safeguards appropriate for a NASA system of records shall be developed by the system manager in a written plan approved by the Installation Security Officer.

(b) When records or copies of records are distributed within NASA they shall be prominently identified as records protected under the Privacy Act and shall be subject to the same safeguard, retention, and disposition requirements applicable to the system of records.

(c) When records or copies of records are distributed to other Federal agencies, other than those having custody of the systems of records, they shall be prominently identified as records protected under the Privacy Act.

(d) Records that are otherwise required by law to be released to the public need not be safeguarded or identified as Privacy Act records.

### § 1212.606 Duplicate copies of records or portions of records.

(a) NASA officials may maintain and use, for official purposes, duplicate copies of records or portions of records from a system of records maintained by their own organizational unit. This practice should occur only where there are justifiable organizational needs for it, e.g., where geographic distances make use of the system of records time consuming or inconvenient. These duplicate copies shall not be considered a separate NASA system of records. For example, an office head or designee may keep duplicate copies of personnel, training, or similar records on employees within the organization for administrative convenience purposes.

(b) No disclosure shall be made from duplicate copies outside of the organizational unit. Any outside request for disclosure shall be referred to the appropriate system manager for response.

(c) Duplicate copies are subject to the same safeguard requirements applicable to the system of records.

## Subpart 1212.7—NASA Authority and Responsibilities

### § 1212.700 NASA employees.

(a) Each NASA employee is responsible for adhering to the requirements of the Privacy Act and this regulation.

(b) An employee shall not seek or obtain access to a record in a NASA system of records or to copies of any portion of such records under false pretenses. Only those employees with an official ''need to know'' may seek and obtain access to records pertaining to others.

(c) Employees shall refrain from discussing or disclosing personal information about others which they have obtained because of their official need to know such information in the performance of official duties.

(d) To the extent included in a contract which provides for the maintenance by or on behalf of NASA of a system of records to accomplish a function of NASA, the requirements of this section shall apply to contractor employees who work under the contract.

**§1212.701 Assistant Deputy Administrator.**

The Assistant Deputy Administrator is responsible for:

(a) Making final Agency determinations on appeals (§1212.400);

(b) Authorizing exemptions from one or more provisions of the Privacy Act for NASA systems of records (See §1212.500); and,

(c) Authorizing an extension for making a final determination on an appeal (§1212.400(d)).

**§1212.702 Associate Administrator for Management Systems and Facilities.**

(a) The Associate Administrator for Management Systems and Facilities is responsible for the following:

(1) Providing overall supervision and coordination of NASA's policies and procedures under this regulation;

(2) Approving system notices for publication in the FEDERAL REGISTER;

(3) Assuring that NASA employees and officials are informed of their responsibilities and that they receive appropriate training for the implementation of these requirments; and,

(4) Preparing and submitting the biennial report on implementation of the Privacy Act to OMB and special reports required under this regulation, including establishing appropriate reporting procedures in accordance with OMB Circular No. A–130.

(b) The Associate Administrator for Management Systems and Facilities may establish a position of 'NASA Privacy Officer,' or designate someone to function as such an officer, reporting directly to the Associate Administrator for Management Systems and Facilities, and delegate to that officer any of the functions described in paragraph (a) of this section.

**§1212.703 Headquarters and Field or Component Installations.**

(a) Officials-in-Charge of Headquarters Offices, Directors of NASA Field Installations and Officials-in-Charge of Component Installations are responsible for the following with respect to those systems of records maintained in their organization:

(1) Avoiding the establishment of new systems of records or new routine uses of a system of records without first complying with the requirements of this regulation;

(2) Ensuring that the requirements of this regulation and the Privacy Act are followed by employees;

(3) Ensuring that there is appropriate coordination within NASA before a determination is made to disclose information without the individual's consent under authority of 5 U.S.C. 552a(b) (See §1212.203(g)); and

(4) Providing appropriate oversight for responsibilities and authorities exercised by system managers under their jurisdiction (§1212.704).

(b) Directors of NASA Field Installations and Officials-in-Charge of Component Installations or designees may establish a position of installation Privacy Officer to assist in carrying out the responsibilities listed in paragraph (a) of this section.

**§1212.704 System manager.**

(a) Each system manager is responsible for the following with regard to the system of records over which the system manager has cognizance:

(1) Overall compliance with the ''Privacy Act—NASA Regulations'' (NASA Management Instruction (NMI) 1382.17) and the Computer Matching Program (NMI 1382.18);

(2) Ensuring that each person involved in the design, development, operation, or maintenance of the system of records is instructed with respect to the requirements of this regulation and the possible penalties for noncompliance;

(3) Submitting a request to the Assistant Deputy Administrator for an exemption of the system under subpart 1212.5 of this part, setting forth in proposed rulemaking form the reasons for the exemption and citing the specific provision of the Privacy Act which is believed to authorize the exemption;

(4) After consultation with the Office of the General Counsel or the Chief Counsel, making reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(5) Making an initial determination on an individual's request to correct or

amend a record, in accordance with § 1212.302;

(6) Prior to disclosure of any record about an individual, assuring that the record is first reviewed for accuracy, completeness, timeliness, and relevance;

(7) Authorizing disclosures of a record without the individual's consent under § 1212.203(g) (1) through (12);

(8) Responding within the requirements of § 1212.200 to an individual's request for information as to whether the system contains a record pertaining to the individual;

(9) Responding to an individual's request for access and copying of a record, in accordance with subpart 1212.2 of this part;

(10) Amending a record under subpart 1212.3 of this part, or filing in an individual's record a statement of dispute;

(11) Preparing an addendum to an individual's statement of dispute to be filed in the individual's records, in accordance with § 1212.401;

(12) Maintaining disclosure accountings in accordance with 5 U.S.C. 552a(c) and 14 CFR 1212.203. This includes records disclosed pursuant to any computer matching programs;

(13) Notifying persons to whom a record has been disclosed and for which an accounting was made as to disputes and corrections involving the record; and

(14) Developing appropriate safeguards for the system of records in accordance with § 1212.605(a).

(b) Where a system of records has subsystems described in the system notice, the subsystem manager will have the responsibilities outlined in paragraph (a) of this section. Although the system manager has no line authority over subsystem managers, the system manager does have overall functional responsibility for the total system, and may issue guidance to subsystem managers on implementation of this part. When furnishing information for required reports, the system manager will be responsible for reporting the entire system of records, including any subsystems.

(c) Exercise of the responsibilities and authorities in paragraph (a) of this section by any system or subsystem managers at a NASA Installation shall be subject to any conditions or limitations imposed in accordance with § 1212.703 (a)(4) and (b).

### § 1212.705 Assistant Administrator for Procurement.

The Assistant Administrator for Procurement is responsible for developing appropriate procurement regulations and procedures under which NASA contracts requiring the maintenance of a system of records in order to accomplish a NASA function are made subject to the requirements of this part.

### § 1212.706 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this regulation is delegated to the officials named, subject to any conditions or limitations imposed in accordance with this subpart 1212.7.

## Subpart 1212.8—Failure To Comply With Requirements of This Part

### § 1212.800 Civil remedies.

Failure to comply with the requirements of the Privacy Act and this part could subject NASA to civil suit under the provisions of 5 U.S.C. 552a(g).

### § 1212.801 Criminal penalties.

(a) A NASA officer or employee may be subject to criminal penalties under the provisions of 5 U.S.C. 552a(i) (1) and (2).

(1) Section 552a(i)(1). Any officer or employee of an agency, who by virtue of employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Section 552a(i)(2). Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be

guilty of a misdemeanor and fined not more than $5,000.

(3) These two provisions apply to NASA civil service employees as well as those employees of a NASA contractor with responsibilities for maintaining a Privacy Act system of records.

(b) Section 552a(i)(3). Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

## PART 1213—RELEASE OF INFORMATION TO NEWS AND INFORMATION MEDIA

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AUTHORITY: 42 U.S.C. 2473(a)(3) and NSDD–84, ''Safeguarding National Security Information.''

SOURCE: 52 FR 45936, Dec. 3, 1987, unless otherwise noted.

### §1213.100 Scope.

This part 1213 sets forth the policy governing the release of information in any form to news and information media. Not included is the release of scientific and technical information to scientific and technical journals and audiences.

### §1213.101 Policy.

(a) Consistent with NASA statutory responsibility, NASA will ''* * * provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, * * *''

(b) Release of information concerning NASA activities and the results will be made promptly, factually and completely. Exceptions include that information whch may be exempt from disclosure under the ''Freedom of Information Act'' (5 U.S.C. 552, as amended) (14 CFR part 1212). For classified DoD missions on the National Space Transportation System (NSTS), release of information concerning NASA activities will be restricted by the STS Security Classification Guide. In addition, information concerning the survivability/vulnerability of the NSTS may be classified for all NSTS operations.

(c) NASA will respond promptly to queries from the information media and industry, and cooperate with contractors in their release of NASA related informational material including advertising.

(d) NASA officials may participate in interviews and speak for the Agency in areas of their assigned responsibility.

### §1213.102 Responsibility.

(a) The Associate Administrator for Public Affairs is responsible for the development and overall administration of an integrated Agencywide communications program and determines whether the specific information is to be released. The Associate Administrator for Public Affairs will:

(1) Direct and coordinate all Headquarters and agencywide public information activities.

(2) Direct and coordinate all agencywide news-oriented audiovisual activities.

(b) In accordance with §1213.104, the Public Affairs Officers assigned to Headquarters Program and Staff Offices are responsible for developing plans and coordinating all public information activities covering their respective programs at Headquarters and in the field.

(c) In accordance with §1213.104, Directors of Field Installations, through their Public Affairs Officers, are responsible for initiating and obtaining concurrences for information programs and public releases issued by their respective installation and component installations.

(d) The requirements of this section do not apply to the Office of Inspector General (IG) regarding IG activities.

[52 FR 45936, Dec. 3, 1987, as amended at 56 FR 66787, Dec. 26, 1991]

**§ 1213.103 Procedures for issuance of news releases.**

(a) All Headquarters news releases will be issued by the Office of Public Affairs, Media Services Division.

(b) Directors of Field Installations, through their Public Affairs Officer, may release information for which that Field Installation is the primary or sole source, i.e., launch, mission, and planetary encounter commentary; telephone recorded messages; status reports; and releases of local or regional interest. Release of information that has national significance will be coordinated with the Associate Administrator for Public Affairs. Material received from contractors prior to its public release may be reviewed for technical accuracy at the contracting Installation.

(c) The requirements of this section do not apply to the Office of Inspector General regarding IG activities.

[52 FR 45936, Dec. 3, 1987, as amended at 56 FR 66787, Dec. 26, 1991]

**§ 1213.104 Procedures for news release coordination and concurrence.**

(a) *General.* All organizational elements of NASA involved in preparing and issuing NASA news releases are responsible for proper coordination and obtaining concurrences and clearances prior to issuance of the news release. Such coordination will be accomplished through the Associate Administrator for Public Affairs, NASA Headquarters.

(b) *Headquarters-field.* (1) The Headquarters Office of Public Affairs will release information after obtaining all necessary concurrences and clearances from the appropriate Program or other Headquarters Office. Field Installations will obtain clearances from the appropriate Institutional Program or other Headquarters Office.

(2) Headquarters issuance of a news release bearing on a Field Installation will be coordinated with the Installation through the appropriate Institutional Program Office/Public Affairs Office, Associate Administrator for Public Affairs, or Director, Media Services Division. If Headquarters is the issuing Agency for a release for which the primary source is an Installation, the Office of Public Affairs will keep the Installation fully informed.

(3) If the Office of Public Affairs changes, delays, or cancels a release proposed for issuance by a Field Installation, the Installation and the appropriate Institutional Program Office affected will be notified of the reasons for the action.

(c) *Field-other.* A release originating in one field installation that involves the activities of another installation (including Headquarters) will not be issued until the concurrences of all installations and appropriate Institutional Program Offices concerned have been obtained. The originating installation is responsible for arranging a mutually acceptable release time.

(d) *Simultaneous release.* Where a release is to be simultaneously issued, whether by Headquarters, a field installation, industry-NASA, or university-NASA, it will be so stated on the news release. Simultaneous release will be coordinated by the Headquarters Director, Media Services Division.

(e) *Date lines.* Out-of-town date lines will not be used on releases issued by Headquarters except in the case of an advance release of a speech text intended for regional distribution in the area where the speech will be delivered.

(f) *Exchange of releases.* All Agency releases will be exchanged electronically with all field installations by the Headquarters newsroom. The full text of important releases, regardless of source, which may generate unusual interest and queries shall be sent by electronic mail or telephoned to all interested installations and Headquarters in advance of release time to enable public information officers to respond intelligently to queries arising locally.

(g) *Exchange of communication activities.* All field installations will exchange information with the appropriate Headquarters Public Affairs Officers concerning news events and releases. Immediate notification will be made to Headquarters and any impacted installation of events or situations that will make news, particularly of a negative nature.

(h) The requirements of this section do not apply to the Office of Inspector General regarding IG activities.

[52 FR 45936, Dec. 3, 1987, as amended at 56 FR 66787, Dec. 26, 1991]

### §1213.105 Interviews.

(a) NASA personnel will respond promptly to requests to media representatives for information or interviews.

(b) Normally, requests for interviews with NASA officials will be made through the appropriate Public Affairs Office. However, journalists will have direct access to those NASA officials they seek to interview.

(c) Information given to the press will be on an ''on-the-record'' basis only and attributable to the person(s) making the remarks. Any NASA employee providing material to the press will identify himself/herself as the source.

(d) Any attempt by news media representatives to obtain classified information will be reported through the Headquarters Office of Public Affairs or Installation Public Affairs Office to the Installation Security Office. The knowing disclosure of classified information to unauthorized individuals will be cause for disciplinary actions against the NASA employee involved.

(e) Public information volunteered by a NASA official will not be considered exclusive to any one media source and will be made available to other sources, if requested.

(f) For a DoD classified operation, all inquiries concerning this activity will be responded to by the designated DoD officer.

[52 FR 45936, Dec. 3, 1987, as amended at 56 FR 66788, Dec. 26, 1991]

### §1213.106 Audiovisual material.

(a) NASA's central repository of audiovisual material will be available to the information media and to all NASA installations.

(b) Field installations will provide NASA Headquarters with:

(1) Selected prints and original or duplicate negatives of news-oriented photographs generated within their respective areas.

(2) Selected color motion picture footage (prints) which, in the opinion of the installation, would be appropriate for use as features in programs.

(3) Audio and/or video tapes of significant news developments and other events of historical or public information interest.

(4) For DoD classified operations, all audiovisual material of or related to the classified operation will be reviewed and deemed releasable by the designated DoD officer.

### §1213.107 International news releases.

(a) All releases of information involving NASA activities or views affecting another country or an international organization require prior coordination with the International Relations Division, Office of External Relations, through the Public Affairs Officer assigned to that division.

(b) NASA field installations and Headquarters offices will report all visits proposed by representatives of foreign news media to the Public Affairs Officer for the International Relations Division, NASA Headquarters.

(c) Safeguards intended to control access to classified information, materials, or facilities and provisions to protect the NSTS as a national resource will not be diminished in providing assistance to foreign or U.S. news representatives.

### §1213.108 Security.

It is the responsibility of each Public Affairs Officer to implement the STS Security Classification Guide for each DoD classified operation on the NSTS. Guidance for this implementation will be provided in the joint NASA and USAF Public Affairs plan for each mission. In addition, each NASA installation involved in the NSTS will have information concerning the protection of the NSTS as a national resource. This category of information, including NSTS survivability/vulnerability data, may be classified. Therefore, all questions regarding security classification will be resolved by the appropriate security classification officer at any NASA installation or by the designated DoD security officer for DoD classified information.

# PART 1214—SPACE SHUTTLE

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1214.1705 Selection of space flight participants.
1214.1706 Program management.
1214.1707 Media and public inquiries.

AUTHORITY: Sec. 203, Public Law 85–568, 72 Stat. 429, as amended (42 U.S.C. 2473).

## Subpart 1214.1—General Provisions Regarding Space Shuttle Flights of Payloads for Non-U.S. Government, Reimbursable Customers

AUTHORITY: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended (42 U.S.C. 2473); Sec. 201(b) Pub. L. 87–624, 76 Stat. 421 (47 U.S.C. 721(b)).

SOURCE: 57 FR 4545, Feb. 6, 1992, unless otherwise noted.

### §1214.100 Scope.

This subpart 1214.1 sets forth general provisions regarding flight of Space Shuttle cargo bay payloads for non-U.S. government, reimbursable customers. It does not apply to Small Self-Contained Payloads flown under the provision of subpart 1214.9 or payloads flown on a space-available basis on NASA-provided Hitchiker carriers.

### §1214.101 Eligibility for flight of a non-U.S. government reimbursable payload on the Space Shuttle.

To be eligible for flight on the Space Shuttle, non-U.S. government, reimbursable payloads must meet criteria for use of the Shuttle established by U.S. law and public policy. The NASA Administrator will determine and/or certify the compliance of the payload with these criteria. To qualify for flight on the Space Shuttle, non-U.S. government, reimbursable payloads must require the unique capabilities of the Shuttle, or be important for either national security or foreign policy purposes.

### §1214.102 Definitions.

(a) *Customer.* Any non-U.S. government person or entity who, by virtue of a contract or other arrangement with NASA, arranges for or otherwise provides payloads to be flown on the Shuttle on a reimbursable basis.

(b) *Dedicated flight.* A shuttle flight flown for a single customer.

(c) *Dedicated flight price.* The price established by NASA for a dedicated

flight that provides the standard services listed in § 1214.115 for 1 day of single-shift, on-orbit mission operations.

(d) *Jettison.* To physically separate all or a portion of a payload from the Shuttle after liftoff of the Shuttle without the intent of fulfilling the payload operations requirements agreed to by NASA and the customer.

(e) *Launch agreement.* The primary document between NASA and the non-U.S. government, reimbursable customer, containing the detailed terms, conditions, requirements and constraints under which NASA commits to provide launch services.

(f) *Marginal cost.* Solely for the purposes of determining the cost of a reflight launch, marginal cost is defined as the cost to the U.S. Government, as determined by NASA's normal accounting procedures, associated with the addition or reduction of one flight in a given U.S. government fiscal year.

(g) *Non-U.S. government reimbursable customers* are:

(1) All non-U.S. Government persons or entities paying NASA for Shuttle services under this subpart 1214.1; or

(2) U.S. Government agencies obtaining reimbursable Shuttle services for those persons or entities cited in paragraph (g)(1) of this section; e.g., the Department of Defense under a Foreign Military sales case.

(h) *Optional services.* Those nonstandard services provided at the customer's request and with the concurrence of NASA. The price for optional services is not included in the standard flight price.

(i) *Payload integration documentation.* Documentation developed to reflect NASA/customer agreements on payload requirements, payload/Shuttle interfaces, and ground and flight implementation of the mission. Includes the Payload Integration Plan, its Annexes and all related documentation.

(j) *Payload length.* The maximum length of the payload in the Space Shuttle cargo bay at any time during launch, landing, operations, deployment, servicing or retrieval. It includes any clearance length necessary for items such as dynamic envelope considerations, deployment, retrieval, servicing and use of the remote manipulator system.

(k) *Payload weight.* The maximum weight of the payload in the Space Shuttle cargo bay, including the weight of the payload itself and a pro rata share of the weight of any special equipment or materials needed for the mission.

(l) *Scheduled launch date.* NASA's official then-best-estimate of the data of launch. This will be the date of record for all scheduling and reimbursement procedures.

(m) *Shared flight.* A flight that may be shared by more than one customer.

(n) *Shuttle standard flight price.* The price for Shuttle standard services provided to the customer.

(o) *Standard launch.* A launch meeting all the launch and orbit criteria defined in § 1214.117.

(p) *Standard services.* Those services which are generally made available for all customers, which for Space Shuttle are generically defined in NASA document NSTS 07700, Volume XIV, and which are included in the standard flight price. If the payload uses only a portion of the standard services, the standard flight price will not be affected.

### § 1214.103 Reimbursement for standard services.

(a) *Establishment of price.* NASA will establish, and update as appropriate, the standard flight price under this § 1214.1.

(b) *Advance pricing.* NASA normally will agree to a standard flight price no later than 3 years in advance of launch.

(c) *Price stability.* The standard flight price will be fixed, subject to the terms of the launch agreement, and subject to escalation pursuant to § 1214.103(d), and will be the price set by NASA as of the time of signing a launch agreement.

(d) *Escalation of payments.* With the exception of payments for earnest money, all payments will be escalated according to the U.S. Bureau of Labor Statistics Index, ''Private Business Sector, All Persons: Productivity, Hourly Compensation, Unit Labor Cost and Prices Seasonally Adjusted'' table, ''Compensation, Per Hour,'' column published in the U.S. Department of Labor, Bureau of Labor Statistics,

news release entitled ''Productivity and Costs.''

(e) *Independence of pricing and manifesting.* The standard flight price for a shared flight payload as computed from 1214.103(g) will be independent from the actual payload manifest for a specific shared flight.

(f) *Allocation of services.* (1) Customers contracting for a dedicated flight are eligible for the full standard services, as defined in § 1214.115, available on the flight.

(2) Customers contracting for a standard shared flight meeting the criteria of § 1214.117 are eligible for a portion of the standard services, as defined in § 1214.115, available on the flight. The basis of apportionment will be determined by NASA and will be a function of the payload load factor.

(g) *Computation of prices.* (1) The Shuttle standard flight price for a dedicated flight is the dedicated flight price as defined in § 1214.102(c).

(2) The Shuttle standard flight price for a standard shared flight is the product of the payload's charge factor and the dedicated flight price as defined in § 1214.102(c).

(3) The computed charge factor for a payload is defined as:

$$\frac{\text{Load Factor}}{0.75}$$

If the computed charge factor exceeds 1.0, the charge factor will be 1.0. If the computed charge factor is less than 0.067, the charge factor will be 0.067.

(4) The load factor is defined as the maximum of:

$$\frac{\text{Payload length, m,}}{18.29\ \text{m}} \text{ or } \frac{\text{Payload weight, kg}}{\text{Shuttle lift capability, kg}}$$

where:

(i) Payload length is as defined in § 1214.102(j);

(ii) Payload weight is as defined in § 1214.102(k);

(iii) For those payloads for which NASA has reviewed and accepted a NASA Form 1628 (Request for Flight Assignment) and received earnest money (if required) prior to (insert date of publication in FEDERAL REGISTER), the Shuttle lift capability for a shared flight, standard launch will be 29,478 kg. For all other payloads, the lift capability for a shared flight, standard launch will be 21,542 kg.

(h) *Payment schedule*—(1) *Earnest money.* Earnest money in the amount of $100,000 per payload will be paid to NASA by the customer. The earnest money will be paid at the time of submission of a NASA Form 1628, and will be applied to the first payment made by the customer toward the standard flight price, or will be retained by NASA unless NASA determines that the payload does not meet the eligibility criteria referenced in § 1214.101.

(2) *Payment schedule for standard services.* (i) Payment for standard services will be made in accordance with the following schedule:

| Number of months before launch flight is scheduled | Percent of price due | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | At time of scheduling | Months prior to scheduled launch date | | | | | | |
| | | 33 | 24 | 18 | 12 | 6 | 3 | Total |
| 33 or more | ..... | 10 | 10 | 15 | 25 | 25 | 15 | 100 |
| 24–32 | 11 | ..... | 10 | 15 | 25 | 25 | 15 | 101 |
| 18–23 | 23 | ..... | ..... | 15 | 25 | 25 | 15 | 103 |
| 12–17 | 42 | ..... | ..... | ..... | 25 | 25 | 15 | 107 |
| 6–11* | 73 | ..... | ..... | ..... | ..... | 25 | 15 | 113 |
| 3–5* | 107 | ..... | ..... | ..... | ..... | ..... | 15 | 122 |
| Less than 3* | 122 | ..... | ..... | ..... | ..... | ..... | ..... | 122 |

*Additional charges pursuant to § 1214.103(h)(2)(ii) also may apply.

(ii) Unless otherwise agreed to by NASA, for purposes of the payment schedule of § 1214.103(h)(2)(i), the percent of price due at the time of scheduling will be the cumulative amount due at the time of:

(A) NASA's initial commitment to the schedule of a newly scheduled payload;

(B) A customer's requested rescheduling of a payload such that it will be launched at an earlier date; or

(C) Rescheduling of a payload postponed at the request of the customer or caused by the customer.

(iii) If the time from a customer's request for initial scheduling or rescheduling of a payload is less than 1 year from the launch date being requested, and NASA can accommodate the request, NASA may also charge the customer any estimated additional cost of providing standard services on such a shortened schedule.

(iv) Normally no charges for standard services will be made after the flight, except for a final adjustment for escalation.

(i) *Late payment fees.* Customers who do not meet the payment schedule defined in § 1214.103(h) will be subject to a late payment fee established by NASA in the launch agreement.

### § 1214.104 Reimbursement for optional services.

(a) *Pricing basis.* To the extent practical, optional services will be provided on a fixed-price or fixed-rate basis. If this is not practical, the price will be on a governmental cost basis; i.e., the actual cost or in certain cases the estimated actual costs.

(b) *Escalation of payments.* All payments for optional services subject to escalation will be escalated in accordance with the provisions of § 1214.103(d).

(c) *Schedules of payments.* NASA will establish payment schedules for optional services and will incorporate those schedules in the launch agreement at the time a particular optional service is agreed to between the customer and NASA.

(d) *Late payment fees.* Customers who do not make payments by the due dates defined by NASA will be subject to a late payment fee established by NASA in the launch agreement.

### § 1214.105 Apportionment and/or assignment of services.

(a) Subject to NASA approval, a customer may apportion and/or assign Shuttle services to third parties within the payload. No apportionment and/or assignment of Shuttle services may take place outside the payload.

(b) Integration of apportioned/assigned payload elements within the payload is the responsibility of the customer. Any NASA assistance in such integration will be provided as an optional service.

(c) Customers intending to apportion and/or assign services will so designate at the time the launch agreement is signed.

### § 1214.106 Minor delays.

NASA will attempt to accommodate customer requested minor launch delays. Such delays will normally be requested just prior to launch. Except for potential optional service charges, delays up to 72 hours can normally be accommodated at no charge. This 72-hour period is shared by all customers on a particular flight. The basis of proration will be established in the launch agreement. Delays beyond 72 hours will require NASA's approval and will result in an additional charge as established in the launch agreement.

### § 1214.107 Postponement.

(a) Provisions of this paragraph apply to postponements requested or caused by the customer.

(b) A customer postponing the flight of a payload will pay a postponement fee to NASA. The fee will be computed as a percentage of the customer's Shuttle standard flight price and will be based on the table below.

| Months before scheduled launch date when postponement occurs | Postponement fee, percent of standard flight price | |
|---|---|---|
| | Dedicated flights | Shared flights |
| More than 33 | 0 | 0 |
| 18 or more but less than or equal to 33 | | |
| —1st postponement | 0 | 0 |
| —2nd and subsequent | 5 | 5 |
| 17 or more but less than 18 | 6 | 9 |
| 16 or more but less than 17 | 7 | 13 |
| 15 or more but less than 16 | 8 | 17 |
| 14 or more but less than 15 | 10 | 20 |
| 13 or more but less than 14 | 11 | 24 |
| 12 or more but less than 13 | 12 | 28 |
| 11 or more but less than 12 | 13 | 32 |
| 10 or more but less than 11 | 14 | 36 |
| 9 or more but less than 10 | 15 | 40 |
| 8 or more but less than 9 | 17 | 43 |
| 7 or more but less than 8 | 18 | 47 |
| 6 or more but less than 7 | 19 | 51 |
| Less than 6 | 20 | 55 |

(c) If at any point, a customer postponement results in a launch date

more than 12 months later than the original scheduled launch date, the standard flight price for the customer's payload may be adjusted by NASA to reflect any new standard flight price applicable at the time of the postponed launch, if such new price is higher than the originally contracted price.

(d) The payment schedule for postponed flights will be as defined in §1214.103(h)(2).

(e) Customers postponing the flight of a payload may also be subject to new or additional charges for optional services.

### §1214.108 Termination.

(a) Customers terminating the launch of a payload will pay a termination fee for standard services to NASA.

(1) The termination fee for dedicated flights will be computed as a percentage of the Shuttle standard flight price and will be based on the table below.

| Months before scheduled launch date when termination occurs | Termination fee, percent of Shuttle standard flight price |
|---|---|
| 18 or more | 10 |
| 17 or more but less than 18 | 11 |
| 16 or more but less than 17 | 12 |
| 15 or more but less than 16 | 13 |
| 14 or more but less than 15 | 15 |
| 13 or more but less than 14 | 16 |
| 12 or more but less than 13 | 17 |
| 11 or more but less than 12 | 18 |
| 10 or more but less than 11 | 19 |
| 9 or more but less than 10 | 20 |
| 8 or more but less than 9 | 22 |
| 7 or more but less than 8 | 23 |
| 6 or more but less than 7 | 24 |
| Less than 6 | 25 |

(2) The termination fee for shared flights will be the sum of all payments previously paid or due for the standard flight price, as defined in §1214.103(h)(2), at the time of termination.

(b) NASA may establish, in the launch agreement, certain conditions under which the customer may terminate a payload launch with reduced termination fees if NASA delays the launch of the customer's payload for an extended period.

(c) Customers terminating the flight of a payload may also be subject to new or additional charges for optional services.

### §1214.109 Scheduling.

(a) *Establishment of a launch date.* (1) NASA will assign a tentative launch date for a payload only after NASA's receipt, review and acceptance of a customer-submitted NASA Form 1628 requesting flight assignment and NASA's receipt of the customer's earnest money.

(2) NASA's confirmation of a particular launch date will be at the time a launch services agreement is signed, normally not later than 36 months prior to the desired launch date.

(b) *NASA changes to launch date.* NASA will attempt to maintain the customer's launch date as long as the customer's obligations, as established by NASA, are met. However, NASA may revise the launch date under those circumstances contained in the launch agreement. If practical, NASA launch date changes will be in consultation with the customer; however, NASA reserves the unilateral right to make decisions with regard to launch schedules.

(c) *Payload delivery.* NASA, in consultation with the customer, will establish a date for payload delivery to the launch site.

(d) *Reflight scheduling.* NASA will attempt to schedule a payload reflight at the earliest opportunity, but normally no earlier than 14 months after a determination is made that a customer is entitled to, and in fact requests a reflight.

### §1214.110 Reflight.

(a) NASA will provide a reflight of a customer's payload under conditions defined in the launch agreement. The standard flight price for reflights will be based on NASA's marginal cost as defined in §1214.102(f). Reflights only apply to dedicated flights and those shared-flight payloads that can be accommodated on a standard launch as defined in §1214.117.

(b) Reflights as defined in this §1214.110 apply only to the same payload involved in the launch that necessitated the reflight, or to an essentially identical payload with essentially identical integration and flight operations requirements.

**§ 1214.111 Rendezvous services.**

(a) A rendezvous mission involves the rendezvous of the Space Shuttle orbiter with an orbiting spacecraft for one or more of the following purposes:

(1) Retrieval and return to Earth of the orbiting spacecraft (or part thereof), including a spacecraft deployed earlier on the same Space Shuttle flight.

(2) Exchange of a spacecraft (or part thereof) delivered to orbit on a particular Space Shuttle mission for an already orbiting spacecraft (or part thereof) and return of already orbiting spacecraft to Earth.

(3) Revisit of an orbiting spacecraft for purposes such as resupply, repair, reboost or inspection.

(b) Mission operational requirements and associated optional service charges and conditions for both dedicated and shared flight rendezvous services will be negotiated on a case-by-case basis.

**§ 1214.112 Patent, data and information matters.**

(a) *Patent and data rights.* NASA will not acquire rights to inventions, patents or proprietary data which may be used in, or arise from, activities for which a customer has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety or welfare, NASA may obtain assurances from the customer that the results will be made available to the public on terms and conditions reasonable under the circumstances.

(b) *Information.* All customers will be required to furnish NASA with sufficient information to ensure Shuttle safety and NASA's and the U.S. Government's continued compliance with law, published policy and the U.S. Government's obligations.

**§ 1214.113 Allocation of risk.**

The U.S. Government will assume no risk for damages to the customer resulting from certain activities conducted under the launch agreement or to third parties resulting from launch related activities or on-orbit operations. The customer will be required to agree to be bound by a cross-waiver of liability among the customer, other customers, related entities and NASA for all activities under the launch agreement. The customer will also be required to purchase third-party liability insurance covering launch and on-orbit operations in an amount deemed appropriate by NASA.

**§ 1214.114 Provision of services.**

NASA will provide, solely at its discretion, services to the extent consistent with U.S. obligations, law, policy and capability.

**§ 1214.115 Standard services.**

Standard services for the Space Shuttle are generically defined in NASA document NSTS 07700, Volume XIV. The standard services to be provided for a specific payload will be agreed to between NASA and the customer in the launch agreement and associated payload integration documentation. Typical standard services include the following for each customer.

(a) A standard launch that meets the criteria established in § 1214.117.

(b) Transportation of the customer's payload in the orbiter cargo bay in a location selected by NASA.

(c) One day of single-shift, on-orbit mission operations.

(d) A five-person flight crew: commander, pilot and three mission specialists.

(e) Orbiter flight planning services.

(f) One day of transmission of payload data to compatible receiving stations via an Independent Payload Data Stream. (Subject to availability, NASA may make excess orbiter instrumentation downlink capability available to payloads at no additional charge.)

(g) Deployment of a free flyer, provided the payload meets all the conditions stated in § 1214.118.

(h) NASA support of selected payload design reviews.

(i) Prelaunch payload installation, verification and orbiter compatibility testing.

(j) NASA payload safety reviews.

**§ 1214.116 Typical optional services.**

Typical optional services that may be provided by NASA include the following, and will be further defined and

limited in payload integration documentation agreed upon by NASA and the customer.

(a) Use of Extended Duration Orbiter (EDO) capability or other mission kits to extend basic orbiter capability.

(b) Extravehicular activity (EVA) services.

(c) Transportation to orbit of all or a part of the customer's payload in other than the orbiter cargo bay.

(d) Unique payload/orbiter integration and test.

(e) Payload mission planning services, other than for launch, deployment and entry phases.

(f) Additional time on orbit.

(g) Payload data processing.

(h) Flight of payload specialists.

(i) Transmission of payload data via an Independent Payload Data Stream during additional time on orbit.

(j) Transmission of payload data via a Direct Data Stream.

### §1214.117 Launch and orbit parameters for a standard launch.

To qualify for the standard flight price, all payloads must meet the following launch criteria:

(a) For dedicated flights:

(1) Launch from Kennedy Space Center (KSC) into the customer's choice of two standard mission orbits: 160 NM circular orbit, 28.5° inclination (nominal), or 160 NM circular orbit, 57° inclination (nominal).

(2) Launch on a date selected by NASA within the scheduling constraints specified in the launch agreement.

(3) Launch at a time, selected by NASA, from a launch window of not less than 1 hour (a more restrictive launch window may be provided as an optional service).

(b) For shared flights from KSC to the standard mission orbit of 160 NM circular orbit, 28.5° inclination (nominal):

(1) Launch on a date selected by NASA within the scheduling constraints specified in the launch agreement.

(2) Launch at any time of day, selected by NASA.

### §1214.118 Special criteria for deployable payloads.

To qualify for the standard flight price, deployable payloads must meet certain criteria in terms of time of day of launch, and other factors. These criteria will be specified in the launch agreement and associated payload integration documentation.

### §1214.119 Spacelab payloads.

(a) *Special provisions.* This §1214.119 establishes the special provisions for Spacelab services provided to Space Shuttle customers. Where designated, provisions of this §1214.119 supersede those of other portions of this document. The following five types of Spacelab flights are available to accommodate payload requirements:

(1) Dedicated-Shuttle Spacelab flight (Ref. §1214.119(d)(3)).

(2) Dedicated-pallet flight (Ref. §1214.119(d)(4)).

(3) Dedicated-FMDM/MPESS (flexible multiplexer-demultiplexer/multipurpose experiment support structure) flight (Ref. §1214.119(d)(4)).

(4) Complete-pallet flight (Ref. §1214.119(d)(5)).

(5) Shared-element flight (Ref. §1214.119(d)(6)).

(b) *Definitions*—(1) *Spacelab elements.* Pallets (3-meter segments), pressurized modules (long or short), and the FMDM/MPESS (1-meter cross-bay structure), all as maintained in the NASA-approved Spacelab configuration.

(2) *Spacelab standard flight price.* The price for standard services provided to Spacelab customers. If a customer elects not to use a portion of the standard services, the Spacelab standard flight price will not be affected. The Spacelab standard flight price is a pro rata share of:

(i) The dedicated flight price as defined in §1214.102(c);

(ii) The standard price for use of the selected Spacelab elements; and

(iii) For complete-pallet and shared-element flights:

(A) The price for 6 extra days on orbit; and

(B) The price for 7 days of second-shift operation.

(c) *Mandatory use of dedicated-Shuttle Spacelab flight.* (1) The customer will be

required to fly under the provisions of § 1214.119(d)(3), if the customer requires exclusive use of any of the following:

(i) Pressurized module (long or short).

(ii) Three pallets in the ''1+1+1'' configuration.

(iii) Four pallets in the ''2+2'' configuration.

(2) In the cases cited in paragraph (1)(i) of this section, if the customer requests, NASA will attempt to find compatible sharees to fly with the customer's payload. If NASA is successful, the customer's Shuttle standard flight price will be the greater of:

(i) The dedicated flight price less reimbursements from sharees actually flown; or

(ii) The computed Shuttle shared-flight price for the customer's Spacelab payload.

(d) *Reimbursement for standard services.* (1) Customers will reimburse NASA an amount equal to the Spacelab standard flight price computed according to the following provisions:

(2) *Earnest money.* For those customers required to pay earnest money in accordance with § 1214.103(h)(1), the total earnest money payment per payload for Spacelab payloads (including Shuttle services) will be either $150,000 or 10 percent of the customer's estimated Spacelab standard flight price, whichever is less.

(3) *Dedicated-Shuttle Spacelab flight.* (i) A dedicated-Shuttle Spacelab flight is a Shuttle flight flown for a single customer who is entitled to select the Spacelab elements used on the flight.

(ii) In addition to the standard services listed in § 1214.119(j), the following standard services are provided to customers of dedicated-Shuttle Spacelab flights and form the basis for the Spacelab standard flight price:

(A) Use of the full standard services of the Shuttle and the Spacelab elements selected.

(B) One day of one-shift on-orbit operations.

(C) Standard mission destinations consistent with launch criteria as defined in § 1214.117.

(D) The available payload operations time of two NASA-furnished mission specialists.

(iii) Customers contracting for a dedicated-Shuttle Spacelab flight will reimburse NASA for standard services an amount that is the sum of:

(A) The dedicated flight price as defined in § 1214.102(c); and

(B) The price for the use of all Spacelab elements used (including all necessary mission-independent Spacelab equipment).

(4) *Dedicated 3-meter pallets and dedicated FMDM/MPESS.* (i) A dedicated pallet (or a dedicated FMDM/MPESS) is one that is flown for a single customer and includes all Spacelab hardware necessary to permit it to be flown on any shared flight as an autonomous payload (e.g., a dedicated 3-meter pallet may either be supplied with its own exclusive igloo or be flown without an igloo, if it requires only standard Shuttle services).

(ii) In addition to a pro rata share of the standard services listed in § 1214.119(j), the following standard services are provided to customers of dedicated pallets (or dedicated FMDM/MPESS) and form the basis for establishing the Spacelab standard flight price:

(A) A pro rata share of the standard services listed in § 1214.115, where the basis for proration is the customer's Shuttle load factor as defined in § 1214.119(l)(4)(i) for dedicated pallets and in § 1214.119(l)(5)(ii) for a dedicated FMDM/MPESS.

(B) The exclusive services of the pallet (or FMDM/MPESS) and all Spacelab hardware provided to support the pallet (or FMDM/MPESS).

(C) One day of one-shift on-orbit operations.

(D) Launch on a shared standard Shuttle flight as defined in § 1214.117.

(E) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration will be the customer's Shuttle load factor.

(iii) Customers contracting for a dedicated-pallet (or FMDM/MPESS) flight will reimburse NASA for standard services an amount that is the sum of:

(A) The product of the customer's Shuttle charge factor and the dedicated flight price as defined in § 1214.102(c); and

(B) The price for the use of the pallet (or FMDM/MPESS) selected (including all necessary mission-independent Spacelab equipment).

(5) *Complete pallet.* (i) A complete Spacelab pallet is one that is flown for a single customer, but flies with other Spacelab elements on a NASA or NASA-designated Spacelab flight and shares the common standard Spacelab services (e.g., shares an igloo with other pallets).

(ii) In addition to a pro rata share of the standard services listed in § 1214.119(j), the following standard services are provided to customers of complete pallets and form the basis for the Spacelab standard flight price:

(A) The pallet's pro rata share of standard services listed in § 1214.115, where the basis of proration will be the customer's Shuttle load factor as defined in § 1214.119(l)(6)(i).

(B) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration will be the customer's Shuttle load factor.

(C) Mission destination selected by NASA in consultation with the customer.

(D) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(E) Launch date established by NASA.

(F) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists and two payload specialists, where the basis of proration will be the customer's Shuttle load factor.

(G) Use of the entire volume above a pallet.

(iii) Customers contracting for complete-pallet flights will reimburse NASA for standard services an amount which is the sum of:

(A) The product of the customer's Shuttle charge factor and the sum of:

(*1*) The dedicated flight price as defined in § 1214.102(c).

(*2*) The charge for 6 extra days of one-shift on-orbit operations.

(*3*) The standard price for additional services required to support a second shift of on-orbit operations for 7 days.

(B) The price for the use of a complete pallet, including all necessary mission-independent Spacelab equipment.

(6) *Shared element.* (i) A shared element is a Spacelab pallet, FMDM/MPESS, or module that:

(A) May be shared by two or more customers on a NASA-designated Spacelab flight; and

(B) Shares common standard services with other Spacelab elements on the same flight.

(ii) In addition to a pro rata share of the standard services listed in § 1214.119(j), the following standard services are provided to customers of shared elements and form the basis for the Spacelab standard flight price:

(A) For shared pallets, a pro rata share of the standard services provided by a pallet. The basis of proration will be the customer's Spacelab load fraction as defined in § 1214.119(l)(7)(i)(A).

(B) For shared modules, a pro rata share of the standard services provided by a long module flown on a dedicated-Shuttle Spacelab flight. The basis of proration will be the customer's Spacelab load fraction as defined in § 1214.119(l)(7)(i)(B). The type of pressurized module actually used to meet a customer's requirement for a shared module will be determined by NASA subsequent to launch agreement negotiations.

(C) A pro rata share of the element's share of standard services listed in § 1214.115, where the basis for proration will be the customer's Spacelab load fraction.

(D) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration will be the customer's Shuttle load factor as defined in § 1214.119(l)(7)(i).

(E) Mission destination selected by NASA in consultation with the customer.

(F) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(G) Launch date established by NASA.

(H) A pro rata share of the on-orbit operations time of two NASA-furnished mission specialists, where the basis of proration will be the customer's Shuttle load factor.

(iii) Customers contracting for shared-element flights will reimburse

NASA for Standard services an amount that is the sum of:

(A) The product of the customer's Shuttle charge factor and the sum of:

(*1*) The dedicated flight price as defined in § 1214.102(c);

(*2*) The charge for 6 extra days of one-shift on-orbit operations; and

(*3*) The standard price for additional services required to support a second shift of on-orbit operations for 7 days.

(B) The product of the customer's element charge factor and the price for the use of the Spacelab element being used, including all necessary mission-independent Spacelab equipment.

(e) *Minor delays.* The minor delay provisions of § 1214.106 will apply only to those Spacelab payloads whose Shuttle load factor is equal to or greater than 0.05.

(f) *Postponement and termination.* (1) A customer may postpone the flight of a Spacelab payload one time with no additional charge if postponement occurs more than 18 months before the scheduled launch date.

(2) Postponement or termination fees for Spacelab payloads will consist of the sum of:

(i) A fee for postponement or termination of the Shuttle launch.

(ii) A fee for use of the Spacelab elements.

(3) For Shuttle launch postponement and termination fee customers will be governed by the provisions of § 1214.107 or § 1214.108, as appropriate.

(4) The postponement and termination fees for use of the Spacelab elements are computed as a percentage of the customer's price for use of the Spacelab elements and will be based on the table below. When postponement or termination occurs less than 18 months before launch, the fees will be computed by linear interpolation using the points provided.

| Months before scheduled launch date when postponement or termination occurs | Fee for use of Spacelab element(s), percent of price for use of element(s) | |
|---|---|---|
| | Postponement | Termination |
| Dedicated Flights, Dedicated Elements, and Dedicated FMDM/MPESS | | |
| 18 or more | 5 | 10 |
| 12 | 14 | 20 |
| 3 | 60 | 85 |
| 0 | 75 | 100 |
| Complete Pallets and Shared Elements | | |
| 18 or more | 5 | 10 |
| 12 | 18 | 80 |
| 9 | 32 | 95 |
| 8 or less | 95 | 100 |

(5) At the time of signing of the launch agreement, NASA will define a payload removal cutoff date (relative to the launch date) for each Spacelab payload to be flown on a shared flight. A customer may still postpone or terminate a flight after the payload's cutoff date; however, NASA will not be required to remove the payload before flight.

(6) Customers postponing or terminating the flight of a payload may also be subject to new or additional charges for optional services associated with Shuttle or Spacelab support provided by NASA.

(g) *Spacelab reflight.* (1) For Spacelab payloads, the provisions of § 1214.110 apply.

[Reserved]

(h) *Premature termination of Spacelab flights.* If a dedicated-Shuttle Spacelab flight, a dedicated-pallet flight or dedicated-FMDM/MPESS flight is prematurely terminated, NASA will refund the optional services charges for planned, but unused, extra days on orbit. If a complete-pallet or shared-element flight is prematurely terminated, NASA will refund a pro rata share of the charges for planned, but unused, extra days on orbit to customers whose payload operations are, in NASA's judgment, adversely affected by such premature termination. The basis for proration will be the customer's Shuttle load factor.

(i) *Integration of payloads.* (1) The customer will bear the cost of the following typical Spacelab-payload mission management functions:

(i) Performing analytical design of the mission.

(ii) Generating mission requirements and their documentation in the Payload Integration Plan (PIP).

(iii) Providing mission-unique training and payload specialists (if appropriate).

(iv) Physically integrating experiments into racks and/or onto pallets.

(v) Providing payload-unique software for use during ground processing, on orbit or in POCC operations.

(vi) Providing operation support.

(vii) Ensuring the mission is safe.

(2) All physical integration (and deintegration) of payloads into racks and/or onto pallets will normally be performed at KSC by NASA. When the customer provides Spacelab elements, these physical integration activities may be done by the customer at a location chosen by the customer.

(3) Except for the restrictions noted in paragraph (i)(2) of this section, and the implementation of paragraph (i)(1)(vii), customers contracting for dedicated-Shuttle and dedicated-pallet flights may perform the Spacelab-payload mission management functions defined in paragraph (i)(1) of this section. NASA will assist customers in the performance of these functions, if requested. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(4) For complete pallets or shared elements, NASA will normally perform the Spacelab-payload mission management functions listed in paragraph (i)(1) of this section. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(5) Integration of payload entities mentioned in paragraphs (i)(2) through (i)(4) of this section with NASA-furnished Spacelab support systems and with the Shuttle will be performed by NASA as a standard service for all payloads flown on customer-furnished Spacelab elements. Customers will be available to participate as required by NASA in these levels of integration. Customer equipment will be operated only to the extent necessary for interface verification. Customers requiring additional payload operation after delivery of the payload to NASA will negotiate such operation as an optional service.

(j) *Common standard services for Spacelab payloads.* The following standard services are common to all Spacelab flights:

(1) Use of Shuttle[1] and Spacelab hardware.

(2) Spacelab interface analysis.

(3) A five-person NASA flight crew consisting of commander, pilot and three mission specialists.

(4) Accommodations for a five-person flight crew.

(5) Prelaunch integration and interface verification of preassembled racks and pallets (Levels III, II and I for NASA-furnished Spacelab hardware; Level I only for customer-furnished Spacelab hardware).

(6) Shuttle[1] and Spacelab flight planning.

(7) Payload electrical power.

(8) Payload environmental control.

(9) On-board data acquisition and processing services.

(10) One day of transmission of payload data to compatible receiving stations via an Independent Payload Data Stream. (Subject to availability NASA may make excess orbiter instrumentation downlink capability available to payloads at no additional charge.)[1]

(11) Use of NASA-furnished standard payload monitoring and control facilities.

(12) Voice communications between on-orbit flight personnel operating the customer's payload and a NASA-designated payload monitoring and control facility.

(13) NASA payload safety review.[1]

(14) NASA support of payload design reviews.[1]

(k) *Typical optional services for Spacelab payloads.* The following are typical optional Spacelab services.

(1) Use of special payload support equipment, e.g., instrument pointing system.

(2) Nonstandard mission destination.

(3) Additional time on orbit.

[1] Typical standard Shuttle services repeated for clarity.

(4) Mission-independent training, use of, and accommodations for all flight personnel in excess of five.

(5) Mission-dependent training of all NASA-furnished personnel and backups.

(6) Analytical and/or hands-on integration (and de-integration) of the customer's payload into racks and/or onto pallets.

(7) Unique integration or testing requirements.

(8) Additional resources beyond the customer's pro rata share.

(9) Additional experiment time or crew time beyond the customer's pro rata share.

(10) Special access to and/or operation of payloads.

(11) Customer-unique requirements for: software development for the Command and Data Management Subsystem (CDMS) onboard computer, configuration of the Payload Operations Control Center (POCC) and/or CDMS used during KSC ground processing.

(12) Extravehicular Activity (EVA) services.

(13) Payload flight planning services.

(14) Transmission of Spacelab data contained in the Shuttle OI telemetry link to a location other than a NASA-designated monitoring and control facility.

(15) Transmission of payload data via an Independent Payload Data Stream during additional time on orbit.

(16) Transmission of payload data via a Direct Data Stream.

(17) Level III/II integration of customer-furnished Spacelab hardware.

(l) *Computation of sharing and pricing parameters*—(1) *General.* (i) Computational procedures as contained in the following subparagraphs will be applied as indicated. The procedure for computing Shuttle load factor, charge factor and flight price for Spacelab payloads replaces the procedure contained in § 1214.103.

(ii) Shuttle charge factors as derived herein apply to payloads meeting the launch and orbit criteria established in § 1214.117. Customers will reimburse NASA an optional services fee for flights to nonstandard destinations.

(iii) The customer's total Shuttle charge factor will be the sum of the Shuttle charge factors for the customer's individual (dedicated, complete or shared) elements, with the limitation that the customer's Shuttle charge factor will not exceed 1.0.

(iv) Customers contracting for pallet-only payloads are entitled to locate minimal controls as agreed to by NASA in a pressurized area to be designated by NASA. There is no additional charge for this service.

(v) NASA will, at its discretion, adjust, up or down, the load factors and load fractions calculated according to the procedures defined in this section. Adjustments will be made for special space or weight requirements, which include, but not limited to:

(A) Sight clearances, orientation or placement limits.

(B) Clearances for movable payloads.

(C) Unusual access clearance requirements.

(D) Clearances extending beyond the bounds of the normal element envelope.

(E) Extraordinary shapes.

The adjusted values will be used as the basis for computing charge factors and prorating services.

(2) *Definitions used in computations.* (i) $L_c$=Chargeable payload length, m. The total length in the cargo bay occupied by the customer's experiment and the Spacelab element(s) used to carry it.

(ii) $W_c$=The weight, kg, of the customer's payload and the customer's pro rata share of the weight of NASA mission-peculiar equipment carried to meet the customer's needs.

(3) *Dedicated-Shuttle Spacelab flight (1-day mission).* The total reimbursement is as defined in § 1214.119(d)(3)(iii).

(4) *Dedicated-pallet flight (1-day mission).* (i) The Shuttle load factors, charge factors and nominal payload capacities for dedicated-pallet flights are shown in the table below. Subject to other Shuttle Spacelab structural limits, customers are entitled to use the payload weight capability of the pallets as indicated in the table. Payload weights in excess of those shown are subject to NASA approval and may entail optional services charges.

| No. of Pallets | Load Factor | | Charge Factor | | Nominal Payload Capacity, kg | |
|---|---|---|---|---|---|---|
| | With Igloo | FMDM Configuration | With Igloo | FMDM Configuration | With Igloo | FMDM Configuration |
| 1 | 0.228 | 0.189 | 0.305 | 0.252 | 2,325 | 2,950 |
| 2 | 0.392 | NA | 0.523 | NA | 4,470 | NA |
| 3-pallet train* | 0.556 | NA | 0.742 | NA | 4,435 | NA |
| 2+1 config. | 0.594 | NA | 0.792 | NA | 7,750 | NA |

*Three pallets requiring the ''1+1+1'' configuration will be flown on a dedicated-flight basis [See § 1214.119(c)(1)].

(ii) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.119(d)(4)(iii).

(5) *Dedicated FMDM/MPESS flight (1-day mission)*—(i) *Shuttle charge factor.* The Shuttle charge factor for dedicated FMDM/MPESS flights is defined as:

$$\frac{\text{Shuttle Load Factor}}{0.75}$$

(ii) *Shuttle load factor.* (A) The Shuttle load factor is defined as the maximum of:

$$\frac{L_c}{18.29\ \text{m}}$$

or

$$\frac{W_c + 767}{21{,}542\ \text{kg}}$$

(B) The minimum value of $L_c$ is based on the element length, plus clearances, and is 1.18 m.

(iii) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.119(d)(4)(iii).

(6) *Complete pallets (7-day mission).* (i) The Shuttle load factor and charge factor for a complete pallet are 0.198 and 0.228, respectively, and its payload weight capability is 2,583 kg. Subject to other Shuttle or Spacelab structural limits, customers are entitled to use this payload weight capability. Payload weight in excess of 2,583 kg is subject to NASA approval and may entail optional service charges.

(ii) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.119(d)(5)(iii).

(7) *Shared elements (7-day mission).*

(i) *Spacelab load fractions and Shuttle load factors.*

(A) *Pallet.* Spacelab load fraction is the greater of:

$$\frac{W_c}{2{,}583\ \text{kg}}$$

or

$$\frac{\text{Payload volume, m}^3}{15\ \text{m}^3}$$

Shuttle load factor is the greater of:

$$\frac{\text{Payload volume, m}^3}{76\ \text{m}^3}$$

or

$$\frac{W_c}{4{,}319\ \text{kg}}$$

(B) *Pressurized module.* Spacelab load fraction and Shuttle load factor are identical and are the greater of:

$$\frac{W_c}{13{,}045\ \text{kg}}$$

or

$$\frac{2 \times (\text{Experiment volume}) + \text{Storage volume, m}^3}{40\ \text{m}^3}$$

(ii) *Shuttle charge factors and element charge factors for pressurized modules.* Shuttle charge factors and element

charge factors are identical and are defined as follows:

| If the Spacelab load fraction (and Shuttle load factor) is: | The element charge factor and Shuttle charge factor will be: |
|---|---|
| Less than 0.00435 | 0.005 |
| 0.00435 to 0.87 | Spacelab load fraction divided by 0.87 |
| Greater than 0.87 | 1.0 |

(iii) *Element charge factors for shared pallets.*

| If the Spacelab load fraction is: | The element charge factor will be: |
|---|---|
| Less than 0.0189 | 0.0218 |
| 0.0189 to 0.87 | Spacelab load fraction divided by 0.87 |
| Greater than 0.87 | 1.0 |

(iv) *Shuttle charge factors for shared pallets.*

| If the Shuttle load factor is: | The Shuttle charge factor will be: |
|---|---|
| Less than 0.00375 | 0.005 |
| 0.00375 to 0.75 | Shuttle load factor divided by 0.75 |
| Greater than 0.75 | 1.0 |

(v) *Total reimbursement.*

(A) The customer's total reimbursement is as defined in § 1214.119(d)(6)(iii).

(B) If a customer contracts for portions of more than one element, the charges for the use of the elements will apply individually to each element used.

(vi) *Pressurized module experiment volume.* Experiment volume in the pressurized module is defined to be the sum of the customer's payload volume in racks and in the center aisle.

(A) Rack volume is defined relative to basic Air Transportation Rack (ATR) configurations. The customer's rack volume will be defined as the volume of one or more rectangular parallelepipeds (rectangular-sided boxes) which totally enclose the cuss payload. Width dimensions will be either 45.1 or 94.0 centimeters. Height dimensions will be integral multiples of 4.45 centimeters. Depth dimensions will be 61.2 or 40.2 centimeters.

(B) Center aisle space volume is defined as the volume of a rectangular parallelepiped which totally encloses the customer's payload. No edge of the parallelepiped will be less than 30 centimeters in length.

(vii) *Pressurized module storage volume.* Storage volume in the pressurized module is defined as the volume of one or more rectangular parallelepipeds enclosing the customer's stowed payload. No edge of the parallelepiped(s) will be less than 30 centimeters in length.

(viii) *Pallet payload volume.* Volume of the customer's pallet-mounted payload is defined as the volume of a rectangular parallelepiped enclosing the pallet payload and customer-dictated mounting hardware. No edge of the parallelepiped will be less than 30 centimeters in length.

## Subpart 1214.2—Reimbursement for Shuttle Services Provided to Civil U.S. Government Users and Foreign Users Who Have Made Substantial Investment in the STS Program

SOURCE: 42 FR 8631, Feb. 11, 1977, unless otherwise noted.

### § 1214.200 Scope.

This subpart 1214.2 sets forth:

(a) The policy on reimbursement for Shuttle services which are provided by NASA to users (as defined in § 1214.201) under launch services agreements, and

(b) Responsibilities for putting such policy into effect and carrying it out.

### § 1214.201 Definition.

For the purpose of this subpart, the term *users* means:

(a) For all civil U.S. Government agencies who request Shuttle services from NASA, and

(b) Foreign users who have made substantial investment in the STS program, i.e., European Space Agency (ESA), ESA member or observer nations participating in Spacelab development, and Canada, when conducting experimental science or experimental applications missions with no near-term commercial implications.

### § 1214.202 Reimbursement policy.

(a) *Features of policy.* (1) All users will be charged on a fixed price basis; there will be no post-flight charges, except for prespecified optional services.

(2) The price will be based on estimated costs.

(3) The price will be held constant for flights in the first three years of Space Transportation System (STS) operations.

(4) Payments shall be escalated according to the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(5) Subsequent to the first three years, the price will be adjusted annually to insure that total operating costs are recovered over a twelve-year period.

(6) Pricing incentives are designed to maximize the proper utilization of the STS.

(b) *Dedicated flight reimbursements.* (1) For the purposes of this policy, a dedicated flight is one sold to a single user.

(2) The policy is established for two distinct phases of Shuttle operations. The first phase is through the third full fiscal year of Shuttle operations and the second phase consists of nine full fiscal years subsequent to the first phase.

(i) For a dedicated Shuttle flight during the first phase, NASA shall be reimbursed in an amount which is a pro-rata share of forecast additive costs averaged over the first phase of three years; however, the price shall not be less than a pro-rata share of forecast total operating costs averaged over both the first and second phases of the twelve year Shuttle operation period.

(ii) For a dedicated Shuttle flight during the second phase, NASA shall be reimbursed a pro-rata share of forecast total operating costs over both phases to insure that total operating costs are recovered over the twelve year period.

(iii) The definition of the costs are specified in this subpart are set forth in appendix A to this subpart.

(iv) Subject to NASA approval, a dedicated flight user may apportion and assign STS services to other STS users provided they satisfy STS user requirements. The price of integrating additional payloads will be negotiated.

(v) A summary of standard Shuttle services included in the flight price is set forth in appendix B to subpart 1214.1.

(vi) The prices of optional Shuttle services are being developed and shall be set forth in the Shuttle Price Book which is being developed. A summary of the optional services is set forth in appendix C to subpart 1214.1.

(vii) For the user with an experimental, new use of space or first time use of space of great public value, the reimbursement to NASA for the dedicated, standard Shuttle flight in either the first or second phase shall be a pro-rata share of the average twelve year additive costs as estimated at the time of negotiations. Programs which qualify for this price will be determined by an STS Exceptional Program Selection Process. In all cases, the Administrator will be the selection official.

(viii) For dedicated flight users, NASA and the user will identify a desired launch date within a period of ninety days three years prior to flight. One year prior to the flight, a firm launch and payload delivery date will be identified by NASA. The firm launch date will be within the first sixty days of the original ninety day period. Launch will occur on the firmly scheduled launch date or within a period of thirty days thereafter. The payload must be ready to launch for the duration of that period.

(c) *Shared flight reimbursements.* (1) The price of a shared Shuttle flight will be a fraction of the dedicated Shuttle flight price. The fraction will be based on the length and weight of the payload and the mission destination at the time of contract negotiations. The formula for computing the fraction is set forth in appendix D to subpart 1214.1.

(2) For shared flight users, NASA and the user will identify a desired launch date three years prior to flight. Launch will occur within a period of ninety days, beginning on the desired launch date. One year prior to flight, a payload delivery date and a firm launch date will be coordinated among the shared flight users. This firm launch date will be within the first thirty days of the original ninety day period. The launch will occur on the firmly scheduled launch date or within a perod of sixty days thereafter. The payloads must be ready to launch for the duration of that period.

(3) A 20 percent discount on the standard flight price will be given to shared flight users who will fly on a space-available (standby) basis. NASA

will provide launch services within a prenegotiated period of one year. Shared flight payloads must be flight deliverable to the launch site on the first day of the one year period and sustain that condition until delivery to the launch site. The user will be notified sixty days prior to the firmly scheduled launch date which has been established by NASA. At that time, NASA will also establish a payload delivery date. The payload must be available at the launch site on the assigned delivery date and ready to launch for a period of sixty days after the firmly scheduled launch date.

(d) *Small self-contained payloads.* Packages under 200 pounds and smaller than five cubic feet which require no Shuttle services (power, deployment, etc.), and are for R&D purposes, will be flown on a space-available basis during both phases of Shuttle operation. The price for this service will be negotiated based on size and weight, but will not exceed $10,000 in 1975 dollars. A minimum charge of $3,000 in 1975 dollars will be made. If Shuttle services are required, the price will be individually negotiated. Reimbursement to NASA will be made at the time the package is scheduled for flight.

(e) *Options.* (1) In order to allow the user greater flexibility in selecting a launch date, the user may purchase a ''floating launch date'' option. At the time of contract execution, the user will begin to make payments according to a 33 month reimbursement schedule for this launching. At any time during Phase 1 or 2, the user may exercise this option by informing NASA of his desired launch date for this option which will then be negotiated by NASA and the user. This launch date must be at least 33 months after the date of the first reimbursement payment. If the desired launch date is within one year of the date of declaration, the short term call-up option and associated fee will apply. If the desired launch is to occur in a year for which a new price per flight is in effect, the user will pay the new price. The fee for this option is 10 percent of the user's flight price in effect at the time of contract execution and is payable at that time. This fee will not be applied to the price of the user's flight.

(2) Options must be exercised for a flight by the end of the second phase of operations or the option fee will be retained by NASA.

(f) *Fixed price period and escalation.* (1) The price will remain constant for flights during the first phase of Shuttle operations. For flights during the second phase, the price wil be adjusted on a yearly basis, if necessary, to assure revovery of total operating costs over a twelve-year period. These adjusted prices will be applicable only to agreements executed after the adjustment is made.

(2) Shuttle services for both phases will be contracted on a fixed price basis. The payments in the contract will be escalated to the time of the payment using the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(g) *Earnest money.* Earnest money shall be paid to NASA prior to NASA's accepting a launch reservation. The earnest money required shall be $100,000 per payload; however, if the payload is a small self-contained payload, the earnest money shall be $500.00 per payload. The earnest money shall be applied to the first payment for each payload made by the customer, or shall be retained by NASA if a launch services agreement is not signed.

(h) *Reimbursement schedule.* (1) Reimbursement shall be made in accordance with the reimbursement schedule contained in this subsection. No charges shall be made after the flight, except as negotiated in the contract for prespecified extra services. Those users who contract for Shuttle services less than three years before the desired launch date will be accommodated and will pay on an accelerated basis according to the reimbursement schedule.

(2) *Standby payloads.* (i) Before the establishment of a firmly scheduled launch date, the number of months before launch will be computed assuming a launch date at the mid-point of the designated one-year period.

(ii) Once the firmly scheduled launch date is established, the user shall reimburse NASA to make his payments current according to the reimbursement schedule.

(3) *Rembursement schedule.*

[Percent of price]

| Number of months before launch flight is scheduled | Months prior to scheduled launch date | | | | | |
|---|---|---|---|---|---|---|
| | 33 | 27 | 21 | 15 | 9 | 3 |
| 33 months or more | 10 | 10 | 17 | 17 | 23 | 23 |
| 27 to 32 months | .... | 21 | 17 | 17 | 23 | 23 |
| 21 to 26 months | .... | .... | 40 | 17 | 23 | 23 |
| 15 to 20 months | .... | .... | .... | 61 | 23 | 23 |
| 9 to 14 months | .... | .... | .... | .... | 90 | 23 |
| 3 to 8 months | .... | .... | .... | .... | .... | ..... |

This schedule holds unless there are offsetting advantages to the U.S. Government of an accelerated launch schedule.

(4) Contracts for Shuttle services made one year or less before a flight and up to three months before a flight will be made on a space-available basis unless short term call-up option is elected.

(i) *Short term call-up option.* (1) For flights contracted on year or less before launch, but not less than three months before launch, short term call-up will be provided to dedicated flight users at the dedicated flight prices according to the reimbursement schedule.

(2) For dedicated flight users requiring short term call-up flights less than three months before launch, NASA will provide STS launch services on a space-available basis. NASA shall be reimbursed the dedication flight price according to the reimbursement schedule plus short term call-up additional costs. The additional costs will be based on estimated costs to be incurred.

(3) For shared flights contracted one year or less before launch, but more than six months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee. The load factor-recovery fee is half the difference between a dedicated flight price and the user's shared flight price or the difference between a dedicated flight price and the total adjusted reimbursements from all shared users, whichever is less.

(4) For shared flights contracted six months or less before launch, but more than three months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard share flight price according to the reimbursement schedule plus a load factor-recovery fee which is the difference between a dedicated flight price and the total adjusted reimbursement from all shared flight users.

(5) Shared flights contracted three months or less before launch will be flown on a space-available basis. NASA shall be reimbursed the shared flight price according to the reimbursement schedule plus short term call-up additional costs. These additional charges will be based on estimated costs to be incurred.

(6) For the purposes of this paragraph, *adjusted reimbursements* is defined to be reimbursements assuming all shared users are among those defined in § 1214.201.

(7) The load factor-recovery fee will never be less than zero.

(8) The load factor-recovery fee is payable upon receipt of NASA's billing therefor.

(j) *Accelerated launches.* For users who reschedule a launch so that it occurs earlier than the planned launch, the user will pay on an accelerated reimbursement schedule. The user will reimburse NASA to make his payments current on the new accelerated reimbursement schedule. If the time from notification of acceleration is less than one year from the new launch date, short term call-up reimbursements will also apply.

(k) *Postponements*—(1) *Non-standby payloads.* (i) A user can postpone a flight of his payload one time with no additional charge if postponement occurs more than one year before launch. For subsequent postponed flights more than one year before launch, the user shall reimburse NASA a postonement fee of 5 percent of the user's flight price. For postponements one year or less before launch, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule in appendix B.

(ii) If the postponement of a flight causes the payload to be launched in a year for which a different price per flight has been established, the new price shall apply if it is higher than the originally contracted price.

(2) *Standby payloads.* (i) For flights postponed more than six months prior to the beginning of the negotiated one-year period, NASA shall renegotiate a new one-year period during which launch will occur. No additional fee will be imposed.

(ii) For flights postponed six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule set forth in appendix B.

(3) Postponement fees are payable upon receipt of NASA's billing therefor.

(4) Flights postponed will henceforth be treated as newly scheduled launches according to the reimbursement schedule. The number of months prior to launch will be taken as the total number or months between the date postponement is elected and the new launch date. Short term call-up options and associated fees shall apply.

(5) Minor delays (up to three days) caused by the users will not constitute a postponement. No fee will be charged for a minor delay.

(l) *Cancellations*—(1) *Non-standby payloads.* Users who cancel a flight more than one year before launch shall reimburse NASA 10 percent of the user's flight price. For a cancelled flight one year or less before launch, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in appendix B.

(2) *Standby payloads.* (i) Users who cancel a flight more than six months prior to the beginning of the negotiated one-year period shall reimburse NASA 10 percent of the user's flight price.

(ii) For a flight cancelled six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in appendix B.

(3) Cancellation fees are payable upon receipt of NASA's billing therefor.

[42 FR 8631, Feb. 11, 1977, as amended at 49 FR 17736, Apr. 25, 1984]

### § 1214.203 Optional reflight guarantee.

(a) If reflight insurance is purchased from NASA, NASA guarantees one reflight of:

(1) The launch and development of a free flying payload into a Shuttle compatible mission orbit if, through no fault of the user, the first launch and deployment attempt is unsuccessful and if the payload returns safely to earth or a second payload is provided by the user.

(2) The launch of an attached payload into its mission orbit if the first launch attempt is unsuccessful through no fault of the user, and if the payload returns safely to earth or a second payload is provided by the user.

(3) A launch of a Shuttle into a payload mission orbit for the purpose of retrieving a payload if the first retrieval attempt is unsuccessful through no fault of the user. This guarantee only applies if the payload is in a safe retrievable condition as determined by NASA.

(b) Reflight insurance is not applicable to payloads or upper stages placed into orbits other than the Shuttle mission orbit.

### § 1214.204 Patent and data rights.

(a) When accommodating missions under this subpart, i.e., experimental science or experimental applications missions for ESA, ESA member states or Canada with no near-term commercial implications, NASA will obtain for U.S. Governmental purposes rights to inventions, patents and data resulting from such missions, subject to the user's retention of the rights to first publication of the data for a specified period of time.

(b) The user will be required to furnish NASA with sufficient information to verify peaceful purposes and to insure Shuttle safety and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

### § 1214.205 Revisit and/or retrieval services.

These services will be priced on the basis of estimated costs. If a special dedicated Shuttle flight is required, the full dedicated price will be charged. If the user's retrieval requirement is

such that it can be accomplished on a scheduled Shuttle flight, he will only pay for added mission planning, unique hardware or software, time on orbit, and other extra costs incurred by the revisit.

### § 1214.206 Damage to payload.

The price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government or its contractors. The U.S. Government, therefore, will assume no risk for damage or loss to the user's payload. The users will assume that risk or obtain insurance protecting themselves against that risk.

### § 1214.207 Responsibilities.

(a) *Headquarters officials.* (1) The NASA Comptroller, in coordination with the Associate Administrator for Space Flight will:

(i) Prescribe guidelines, procedures, and other instructions which are necessary for estimating costs and setting prices and publishing them in the NASA Issuance System, and

(ii) Review and arrange for the billing of users.

(2) The Associate Administrator for Space Flight will arrange for:

(i) Developing estimates for costs and establishing prices in sufficient detail to reveal their basis and rationale.

(ii) Obtaining approval of the NASA Comptroller of such estimates and related information prior to the execution of any agreement, and

(iii) Reviewing of final billings to users prior to submission to the NASA Comptroller.

(b) *Field installation officials.* The Directors of Field Installations responsible for the STS operations will:

(1) Maintain and/or establish agency systems which are needed to identify costs in the manner prescribed by the NASA Comptroller,

(2) Compile financial records, reports, and related information, and

(3) Provide assistance to other NASA officials concerned with costs and related information.

## APPENDIX A TO SUBPART 1214.2—COSTS FOR WHICH NASA SHALL BE REIMBURSED

*Total Operating Costs.* Total Operating Costs include all direct and indirect costs, excluding costs of composing the use charge. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead and contract administration.

## APPENDIX B TO SUBPART 1214.2—OCCUPANCY FEE SCHEDULE

For a postponed or cancelled dedicated flight, the occupancy fee will be zero.

For a postponed or cancelled shared flight, the occupancy fee will be computed according to the computation instructions set forth below. If the computation results in an occupancy fee which is less than zero, the occupancy fee will be reset to zero.

For a postponed or cancelled shared flight one year or less, but more than six months before launch, the user shall reimburse NASA an occupancy fee of half the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a postponed or cancelled shared flight six months or less before launch, the user shall reimburse NASA an occupancy fee of 90% of the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a given shared flight, if the occupancy fee so computed would result in total adjusted reimbursements (exclusive of the 5% (10%) postponement (cancellation) fee) in excess of the price of a dedicated flight, the occupancy fee will be reduced in order to recover the price of a dedicated flight.

In the event that, as a result of the postponement or cancellation, the Shuttle is not launched at all for the intended flight, the occupancy fee will be zero.

For purposes of this attachment, *adjusted reimbursements* is defined to be reimbursements assuming all users are among those defined in § 1214.201.

# Subpart 1214.3—Payload Specialists for Space Transportation System (STS) Missions

SOURCE: 54 FR 48587, Nov. 24, 1989, unless otherwise noted.

**§ 1214.300 Scope.**

(a) This revision of subpart 1214.3 redefines the title of payload specialist and sets forth NASA's policy on and process for the determination of need, selection, and utilization of payload specialists and additional mission specialists to be assigned to a Space Transportation System (STS) flight in addition to the standard NASA flight crew.

(b) This subpart does not apply to the selection of crew for the Space Station Freedom. It is recognized that the Space Station has unique requirements regarding its crew and that a separate, specifically tailored policy will need to be developed in the future.

**§ 1214.301 Definitions.**

(a) *Payload specialists.* Individuals other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required on board the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(b) *NASA or NASA-related payload.* A specific complement of instruments, space equipment, and support hardware, developed by a NASA Program Office or by another party with which NASA has a shared interest, and carried into space to accomplish a mission or discrete activity in space.

(c) *Mission.* The performance of a coherent set of investigations or operations in space to achieve program goals. A single mission might require more than one flight or more than one mission might be accomplished on a single flight.

(d) *Mission manager.* The official responsible for the implementation of the payload portion of an STS flight(s).

(e) *Mission specialist.* A career NASA astronaut trained and skilled in the operation of STS systems related to payload operations and thoroughly familiar with the operational requirements and objectives of the payloads with which the mission specialist will fly. The mission specialist, when designated for a flight, will participate in the planning of the mission and will be responsible for the coordination of overall payload/STS interaction. The mission specialist will direct the allocation of STS and crew resources to the accomplishment of the combined payload objectives during the payload operations phase of the flight in accordance with the approved flight plan.

(f) *Investigator Working Group (IWG).* A group composed of the Principal Investigators, or their representatives, whose primary purpose is facilitating or coordinating the development and execution of the operational plans of an approved NASA program or reporting the progress thereof.

(g) *Payload sponsor.* For NASA and NASA-related payloads the payload sponsor is the Associate Administrator of the sponsoring Program Office whose responsibilities are most closely related to the particular scientific or engineering discipline associated with a payload. For all other payloads, the payload sponsor is identified by the Associate Administrator who contracts with the agency or organization, whether foreign or domestic, private-sector or governmental, to fly a payload on the STS.

(h) *Unique requirements.* The need for a highly specialized or unusual technical or professional background or the need for instrument operations requiring a highly specialized or unusual background that is not likely to be found in the group of mission specialists or cannot be attained in a reasonable training period.

**§ 1214.302 Background.**

(a) The Space Transportation System (STS) has been developed to expand the Nation's capabilities to utilize the unique environment of space. It provides opportunity for individuals other than career astronauts to participate as onboard members of the flight crew under specified conditions. The purpose of such participation by these individuals is to ensure the achievement of the payload or mission-related objectives.

(b) The STS will provide these additional crew members with a habitable working environment and support services in such a way as to require a minimum of dedicated space flight training, allowing them to concentrate their efforts on the accomplishment of their scientific, technical, or mission objectives.

**§1214.303 Policy.**

(a) *General.* (1) The Challenger accident marked a major change in the U.S. outlook and policies with respect to the flight of other than NASA astronauts. NASA and interested external parties, domestic and international, must re-examine previous understandings, expectations, and commitments regarding flight opportunities in light of the new policies now being enunciated.

(2) NASA policies and their implementation recognize that:

(i) Every flight of the Shuttle involves risks;

(ii) Flight opportunities will now generally be limited to professional NASA astronauts and payload specialists essential for mission requirements; and

(iii) Top priority must be given to:

(A) Establishing, proving, and maintaining the reliability and safety of the Shuttle system;

(B) Timely and efficient reduction of the backlog of high priority scientific and national security missions; and maximum utilization of the Shuttle capacity for primary and secondary payloads that require transportation to or from orbit by the Space Shuttle.

(3) All Shuttle flights will be planned with a minimum NASA crew of five astronauts (commander, pilot, and three mission specialists). When payload or other mission requirements define a need and operational constraints permit, the crew size can be increased to a maximum of seven. Any such additional crew members must be identified at least 12 months before flight and be available for crew integration at 6 months.

(4) NASA policy and terminology are revised to recognize two categories of persons other than NASA astronauts, each of which requires separate policy treatment. They are:

(i) *Payload specialists,* redefined to refer to persons other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required onboard the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(ii) *Space flight participants,* defined to refer to persons whose presence onboard the Space Shuttle is *not* required for operation of payloads or for other essential mission activities, but is determined by the Administrator of NASA to contribute to other approved NASA objectives or to be in the national interest.

(b) *Payload specialists.* Payload specialists may be added to Shuttle crews when more than the minimum crew size of five is needed and unique requirements are involved. In the case of foreign-sponsored missions and payloads, the need and requirements for payload specialists will be negotiated and mutually agreed between the foreign sponsors and NASA. The selection process for additional crew members to meet approved requirements will first give consideration to qualified NASA mission specialists. When payload specialists are required, they will be nominated by the appropriate NASA, foreign, or other designated payload sponsor. In the case of NASA or NASA-related payloads, the nominations will be based on the recommendations of the appropriate Investigator Working Group (IWG).

(c) *Space flight participants.* NASA remains committed to the long-term goal of providing space flight opportunities for persons outside the professional categories of NASA astronauts and payload specialists when this contributes to approved NASA objectives or is determined to be in the national interest. However, NASA is devoting its attention to proving the Shuttle system's capability for safe, reliable operation and to reducing the backlog of high priority missions. Accordingly, flight opportunities for space flight participants are not available at this time. NASA will assess Shuttle operations and mission and payload requirements on an annual basis to determine when it can begin to allocate and assign space flight opportunities for future space flight participants, consistent with safety and mission considerations. When NASA determines that a flight opportunity is available for a space flight participant, first priority will be given to a ''teacher in space,'' in fulfillment of space education plans.

**§ 1214.304 Process.**

(a) *Determining the need for additional crew members.* The payload sponsor will be responsible for recommending the number of addition crew members and for establishing the technical or scientific need, the selection criteria, uniqueness of qualifications, the proposed training, and other requirements for the additional crew members. The payload sponsor's requirements for additional crew members, their qualifications, and the proposed duration for training will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(b) *Selection of additional crew members for NASA and NASA-related payloads.* After the requirement for additional crew members has been established, the IWG will be tasked by the payload sponsor to commence the selection process. The IWG review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) Prior to the payload sponsor's recommendation for additional crew members and at his/her direction, the IWG will have studied the requirements of the selected investigations, the number, qualifications, training requirements and other requirements of payload specialists, and backups necessary to support the payload objectives, and made recommendations to the payload sponsor.

(2) Members of the mission specialist cadre will be considered first. The payload mission manager, on behalf of the IWG, will convey the selection criteria for the proposed additional crew members to the Chief, Astronaut Office. The IWG, the mission manager, and the Astronaut Office will coordinate the review of the proposed candidates and the mission manager will forward recommendations to the payload sponsor. Recommendations from the payload sponsor will be submitted to the Associate Administrator for Space Flight for approval.

(3) If mission specialists meeting the requirements cannot be provided because of the uniqueness of requirements or impracticability of the resultant training obligation, or if backup payload specialists are required, the IWG may then solicit candidate payload specialists from outside the career astronaut corps. The solicitation will require, as a minimum, that a summary of professional qualifications be submitted to the IWG. In addition, a medical history, and the results of the physical examination described in paragraph (b)(3)(iii) of this section will be required. The IWG will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of § 1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialists through the mission manager to the payload sponsor who in turn will determine final recommendations which will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(4) The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the payload specialist selections.

(c) *Selection of additional crew members for foreign payloads.* The need and requirements for payload specialists will be negotiated and mutually agreed to between the foreign sponsor and NASA. This negotiating process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center

who will provide operational and applicant suitability criteria. After agreement is reached, the payload sponsor will initiate the selection process. Subject to the negotiated agreement, subsequent steps in the process will be similar to those described in §1214.304(b) modified as follows:

(1) The IWG functions will be performed by a selection committee or other procedure designated by the payload sponsor.

(2) The payload sponsor will designate an individual to perform the mission manager functions.

(3) The committee or procedure in paragraph (c)(1) of this section and the person named in paragraph (c)(2) of this section will be established during the negotiations between the foreign sponsor and NASA, consistent with the specific circumstances.

(4) The payload sponsor will also be responsible for submission to NASA by an appropriate authority of written assurance that an inquiry has been made into the recommended payload specialist's background and suitability on the basis of standards similar to those applied to NASA payload specialist candidates and a statement by the selected candidate asserting a willingness to accept the applicable provisions of §1214.306. These written assurances must be received and accepted by NASA before selection and before any NASA training can begin.

(d) *Selection of additional crew members for other payloads.* After the request for additional crew members is approved, the payload sponsor will commence the selection process. The payload sponsor review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) The payload sponsor will first consider members of the mission specialist cadre. A representative of the payload sponsor selection committee will convey the selection criteria for the proposed payload specialists to the Chief, Astronaut Office, and coordinate on the recommendations for mission specialists to satisfy the requirements. The recommendations will be submitted to the Associate Administrator for Space Flight for approval who will then advise the Administrator of the selections.

(2) If mission specialists meeting the requirements cannot be provided because of the uniqueness of qualifications or impracticability of the resultant training obligation, the payload sponsor selection committee, with concurrence from the payload sponsor and the Associate Administrator for Space Flight, may then consider other candidate payload specialists. The payload sponsor will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of §1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at the Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialist selection to the Associate Administrator for Space Flight for approval.

(e) *Preflight activities for additional crew members.* Mission specialists serving as additional crew for the payload, once selected, will be primarily responsible to the mission manager who, together with the IWG (or comparable body designated by the payload sponsor) and the Director, Flight Crew Operations, will determine the integrated training and work schedules as appropriate to the areas of responsibilities outlined in the following paragraphs.

(1) The IWG for NASA and NASA-related payloads or the Payload Sponsor for all other payloads is responsible for defining the training necessary for payload elements within its cognizance. The mission manager is responsible for

the total integrated payload training and will assist the IWG as necessary in carrying out the defined training activities.

(2) The Director, Flight Crew Operations, is responsible for establishing the training requirements for payload specialists on Orbiter, Spacelab, and STS-provided payload support systems as appropriate. In order to enhance the crew integration process, the additional crew members (payload specialists and additional mission specialists) will be based at the Johnson Space Center 6 months prior to flight, unless otherwise agreed between the payload sponsor and the Director, Flight Crew Operations, Johnson Space Center.

(3) The payload specialists must be certified for flight by the Director, Flight Crew Operations, upon satisfactory completion of all required training and demonstrated performance of assigned tasks. Certification of the payload specialist's readiness for flight will be made to the payload mission manager and will include an assessment by the crew commander of the payload specialist's suitability for space flight.

(4) The mission manager is responsible for verifying to the payload sponsor that all crew members are properly trained for in-flight payload operations.

(i) The medical program for payload specialists will be continued during the preflight period in accordance with the NASA Class III Space Flight Medical Selection Standards.

(ii) If, during the preflight period, the number of additional crew members is reduced to fewer than that agreed to, or an additional crew member does not meet the certification requirements, the necessary reprocessing may be initiated to provide replacements consistent with the above described selection process and the STS training requirements.

(f) *Designation of primary and backup payload specialists (when required).* At an appropriate time designated by the mission manager (not later than 9 months prior to flight), the IWG for NASA and NASA-related payloads or payload sponsor for all other payloads will recommend which payload specialists should be designated as prime and which as backup. However, in cases where mission specialists have been selected for the payload specialist position(s), they will be considered as primary at the time of selection. The recommendations will be forwarded by the mission manager to the Program Office which will review the recommendations and forward them to the Associate Administrator for Space Flight for concurrence. The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the selections.

(g) *Effective date.* The described selection process will apply to all STS missions for which selections have not been approved prior to December 31, 1988.

### § 1214.305 Payload specialist responsibilities.

(a) *Relationship with flight crew.* The crew commander has overall responsibility for crew integration and the safe and successful conduct of the mission. With respect to crew and vehicle safety, the commander has ultimate responsibility and authority for all assigned crew duties. The payload specialist is responsible to the authority of the commander and operates in compliance with mission rules and Payload Operation Control Center directives. Payload specialists are expected to operate as an integral part of the crew and will participate in crew activities as specified by the crew commander.

(b) *Operation of payload elements.* The payload specialist will be responsible for the operation of the assigned payload elements. Onboard decisions concerning assigned payload operations will be made by the payload specialist. A payload specialist may be designated to resolve conflicts between the payload elements and approve such deviation from the flight plan as may arise from equipment failures or STS factors. In the instance of STS factors, the mission specialist will present the available options for the payload-related decisions by the payload specialist.

(c) *Operation of STS equipment.* The payload specialist will be responsible for knowing how to operate certain Obiter systems, such as hatches, food,

and hygiene systems, and for proficiency in those normal and emergency procedures which are required for safe crew operations, including emergency egress and bail out. The responsibility for on-orbit management of Orbiter systems and attached payload support systems and for extravehicular activity and payload manipulation with the Remote Manipulator System will rest with the NASA flight crew. The NASA flight crew will operate Orbiter systems and standard payload support systems, such as Spacelab and Internal Upper Stage systems. With approval of the commander, payload specialists may operate payload support systems which have an extensive interface with the payload.

### §1214.306 Payload specialist relationship with sponsoring institutions.

Specialists who are not U.S. Government employees must enter into a contractual or other arrangement establishing an obligatory relationship with an institution participating in the payload as designated by the payload sponsor prior to selection and before entering into training at a NASA installation or NASA-designated location. Payload specialists who are not otherwise U.S. Government employees will not become U.S. Government employees by virtue of being selected as a payload specialist. Except as specified in the following paragraphs of this section, NASA will not enter into any direct contractual or other arrangement with individual payload specialists. Any exception must be approved by the NASA Administrator.

(a) Payload specialists who are not citizens of the United States will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(b) Payload specialists who are citizens of the United States and who are not employees of the U.S. Government, will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(c) Payload specialists who are employed by a branch, department, or agency of the U.S. Government other than NASA may (pursuant to the exercise of judgment by the NASA General Counsel) be required to enter into an agreement with NASA to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

## Subpart 1214.4 [Reserved]

## Subpart 1214.5—Mission Critical Space System Personnel Reliability Program

SOURCE: 55 FR 53289, Dec. 28, 1990, unless otherwise noted.

### §1214.500 Scope.

This subpart 1214.5 establishes a program designed to ensure that personnel assigned to mission critical positions/duties meet the screening requirements outlined in §1214.504 of this part.

### §1214.501 Applicability.

(a) This regulation applies to civil service and contractor personnel at NASA Headquarters and field installations who work in activities that are vital to the safety and success of mission critical space systems.

(b) The provisions of this regulation apply to all civil service and contractor personnel assigned to mission critical positions/duties with the exception of the personnel addressed in §1214.501(c) of this part. This includes command and decision making personnel as well as technicians.

(c) This regulation does not include flight crew or payload specialists. They are covered by NASA Management Instruction (NMI) 33304 (14 CFR part 1214, subpart 1214.11), ''NASA Astronaut Candidate Recruitment and Selection Program.''

(d) This regulation applies to Space Station Freedom International Partners in that the certification requirements in §1214.505(f) of this part apply to foreign personnel in mission critical positions/duties.

**§ 1214.502 Definitions.**

(a) *Mission Critical Space Systems.* The Space Shuttle and other critical space systems, including Space Station Freedom, designated Expendable Launch Vehicles (ELV's), designated payloads, Shuttle Carrier Aircraft and other designated resources that provide access to space. The Director of each NASA Installation will designate areas associated with these systems that are mission critical space systems areas.

(b) *Mission Critical Positions/Duties.* Positions/duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize mission critical space systems and/or delay a mission. While this regulation establishes suitability screening requirements which, if met, will allow unescorted access to mission critical space areas, compliance with the requirements does not authorize unescorted access to classified areas by Personnel Reliability Program (PRP) personnel who do not have security clearances.

(c) *Medical Authority.* A NASA civil service or contract physician/psychiatrist responsible for maintaining medical records, providing results of medical evaluations, and interpreting evaluations as they relate to reliable performance of mission-critical duties. The medical authority will coordinate evaluations with the investigatory authority.

(d) *Investigatory Authority.* A NASA civil service or contract individual responsible for reviewing court, law enforcement (Civil, DOD, NASA, other Federal), and other official records and NASA screening plans/procedures records to provide evaluations, recommendations, and guidance to NASA organizations, supervisors, and PRP adjudicators on issuing, denying, or revoking eligibility for mission critical positions/duties.

(e) *Certification.* The determination that an employee assigned to duties as described in § 1214.505 of this part, is qualified to perform those duties, and that this employee has been found reliable in accordance with the adjudication guidelines set forth in Attachment B of NMI 8610.13.[1]

**§ 1214.503 Policy.**

(a) The Space Shuttle and the Space Station Freedom are included in the NASA National Resource Protection Program as delineated in NMI 8610.22, ''National Resource Protection Program.''[2] The Space Shuttle and the Space Station Freedom provide a capability to support a wide range of scientific applications and commercial, defense, and international uses. Since they will contribute significantly to ensuring a scientifically, technologically, and economically strong and secure nation, program reliability, operational and safety considerations require that stringent measures be taken to provide for the protection of the systems. In addition to the Space Shuttle and the Space Station Freedom, designated ELV's, designated payloads, Shuttle Carrier Aircraft and other designated resources which provide the same critical access to space or the ability to accomplish critical objectives in space are considered to constitute valued national resources.

(b) Measures to ensure this protection are:

(1) Special physical security provisions as provided in NMI 8610.22.[3]

(2) Procedures to ensure that personnel assigned to mission critical positions/duties meet screening requirements, as set forth in § 1214.504 of this part prior to unescorted access to areas where mission critical space systems are located.

**§ 1214.504 Screening requirements.**

(a) Only those persons who are certified under the PRP will have unescorted access to mission critical space systems areas, be assigned to, employed in, or retained in mission critical positions/duties. While this regulation provides for unescorted access to mission critical space systems areas, it does not preclude the need for escorting of PRP personnel who do not have security clearances in classified areas. The certification will be based on an evaluation of screening data which is to be undertaken by a trained evaluator using evaluation guidance

[1] Copies may be obtained from NASA Headquarters (Code NA–2), Washington, DC 20546.

[2] See footnote 1 to § 1214.502(e).

[3] See footnote 1 to § 1214.502(e).

and criteria contained in Federal Personnel Manual (FPM) chapter 731 and Attachment B (Adjudication Guidelines) of NMI 8610.13.[4] The need for impartial and consistent evaluation of data based on a set of standards is considered paramount to the successful implementation of this program.

(b) Determination of suitability for assignment to mission critical positions/duties will be made on the basis of the following criteria:

(1) Supervisory nomination (per requirements of §1214.505(c) of this part) and assurance of ability to perform mission critical duties as evidenced by performance during training and while on the job.

(2) Medical evaluation (for cause only) by NASA designated medical/psychiatric authority consistent with:

(i) The guidelines and requirements of the NASA Occupational Health Division as required to ensure adequate health for competent and reliable performance; and

(ii) Information developed by testing, review and other screening regarding an individual's health, drug or alcohol abuse, or other factors which may reflect adversely on his or her cognizance, judgement, and ability to act reliably. Such information shall be considered ''cause'' within the meaning of this subsection.

(iii) All information obtained by medical or Employee Assistance Program evaluation is subject to federal and state statutes and regulations pertaining to the privacy and confidentiality of patient/client information.

(3) Evaluation by a NASA-designated investigatory authority including a review of the results of any National Agency Check (including a name check of the Federal Bureau of Investigation (FBI) fingerprint records) completed within the past 5 years. When the National Agency Check indicates that a more extensive investigation has been completed, the results of that investigation will also be reviewed.

(4) Local agency checks as appropriate.

(5) A review of the PRP candidate's personnel employment records.

(6) A review of the Inspector General case files.

(c) Information acquired during the screening process will be protected in a manner consistent with the provisions of the Privacy Act and other pertinent laws and regulations.

**§1214.505 Program implementation.**

(a) The Director of each NASA Installation will designate mission critical space systems areas.

(b) NASA installations will identify positions/duties subject to this regulation and will identify all civil service and contractor personnel assigned to these positions/duties. The number of persons so identified must be the absolute minimum necessary to meet operational requirements.

(c) Each NASA installation to which this regulation is applicable will establish:

(1) A suitability certification system including a designated certifying official to ensure that the screening requirements of this regulation are met. Adjudication Guidelines (Attachment B of NMI 8610.13)[5] provides a baseline for each installation to consider in formulating a certification approach. The screening/evaluation plans and procedures formulated at each installation will be approved by Headquarters (Office of Safety and Mission Quality (Code Q) and appropriate Program Associate Administrators) before implementation.

(2) A management review process to validate the objectivity of individual suitability certification determinations and to ensure that reassignments or other personnel actions taken pursuant to this regulation are fair and in consonance with applicable personnel policies and procedures.

(3) An adequate training program for certifying officials, supervisors, adjudicators, and other installation personnel approved by Headquarters Code Q before implementation.

(4) Each NASA installation will maintain a roster of installation adjudicators. Directors of the Installations will approve appointment of adjudicators.

(d) Supervisors will:

[4] See footnote 1 to §1214.502(e).

[5] See footnote 1 to §1214.502(e).

(1) Review for reliability and nominate personnel whose duties require certification under the PRP.

(2) Certify that the PRP candidate holds current licenses, skill training certificates, and other documentation issued as required by applicable directives.

(3) Brief PRP candidates and rebrief PRP personnel on the needs and intent of the PRP.

(4) Monitor and continually evaluate personnel for steady reliable performance and notify the certifying official if changes occur which may compromise the safety and reliability of mission critical space systems.

(e) NASA Headquarters Office of Safety and Mission Quality (Code Q) will act as the Office of Primary Responsibility (OPR) for PRP policy and oversight (periodic review). The certification of Headquarters personnel will be carried out by the Office of Headquarters Operations (Code D) in accordance with § 1214.505 of this part.

(f) Foreign representatives requiring access to mission critical space systems or having the need to assume mission critical positions/duties (as defined in § 1214.502 of this part) pursuant to international agreements also require certification under this program. NASA will accept certifications from foreign agencies following review under the NASA Headquarters process (§ 1214.505(e) of this part), if a written agreement has been reached with the foreign sponsoring agency whereby NASA recognizes the foreign agency's process as equivalent to its own. Such agreements will be negotiated by the International Relations Division (Code XI) with the concurrence of the NASA Headquarters Office of Safety and Mission Quality (Code Q) and the Program Office responsible for the program to which such access is sought. The intent of the certification process is that foreign personnel are screened as thoroughly as are U.S. citizens who have access to mission critical space systems areas or who have the need to assume mission critical duties.

(g) NASA will accept certifications from other Federal agenices, departments, and offices following review under the NASA Headquarters process (Section 1214.505(e) of this part), if a written agreement has been reached whereby NASA recognizes that process as equivalent to its own. Such agreements will be negotiated by the NASA Headquarters Office of Safety and Mission Quality (Code Q) and the Program Office responsible for the program to which such access is sought. A security clearance to access classified material is not sufficient to meet the certification requirements of this regulation.

## Subpart 1214.6—Mementos Aboard Space Shuttle Flights

AUTHORITY: Pub. L. 85–568, 72 Stat. 426 (42 U.S.C. 2473(c)).

SOURCE: 56 FR 31074, July 9, 1991, unless otherwise noted.

### § 1214.600 Scope.

This subpart establishes policy, procedures, and responsibilities for selecting, approving, packing, storing, and disposing of mementos carried on Space Shuttle flights.

### § 1214.601 Definitions.

(a) *Mementos.* Flags, patches, insignia, medallions, minor graphics, and similar items of little commercial value, especially suited for display by the individuals or groups to whom they have been presented.

(b) *Official Flight Kit (OFK).* A container, approximately 0.057 cubic meters (2 cubic feet) in size, reserved for carrying official mementos of NASA and other organizations aboard Space Shuttle flights. No personal items will be carried in the OFK.

(c) *Personal Preference Kit (PPK).* A container, approximately 12.82 centimeters×20.51 centimeters×5.13 centimeters (5″×8″×2″) in size, separately assigned to each individual accompanying a Space Shuttle flight for carrying personal mementos during the flight.

### § 1214.602 Policy.

(a) *Premise.* Mementos are welcome aboard Space Shuttle flights. However, they are flown as a courtesy—not as an entitlement. The Associate Administrator for Space Flight is free to make exceptions to this accommodation without explanation. Moreover, mementos are ballast not payload. They

can be reduced or eliminated (by the Deputy Director, Space Shuttle Program, Johnson Space Center) for weight, volume, or other technical reasons without reference to higher authority.

(b) *Constraints.* Mementos to be carried on Space Shuttle flights must be approved by the Associate Administrator for Space Flight and are stowed only in an OFK or a PPK. Mementos will not be carried within payload containers, including Get-Away Specials, or in any other container or locker aboard the Space Shuttle, other than within the designated OFK or PPK.

(c) *Economic Gain.* Items carried in an OFK or a PPK will not be sold, transferred for sale, used or transferred for personal gain, or used or transferred for any commercial or fund-raising purpose. Items such as philatelic materials and coins that, by their nature, lend themselves to exploitation by the recipients, or create problems with respect to good taste; or that are large, bulky, or heavy items (in the context of the OFK's size, as indicated in §1214.601(b) of this part) will not be approved for flight.

### §1214.603 Official Flight Kit (OFK).

(a) *Purpose.* The OFK on a particular flight enables NASA, developers of NASA sponsored payloads, NASA's external payload customers, other Federal agencies, researchers, aerospace contractors, and counterpart institutions of friendly foreign countries to utilize mementos as awards and commendations or preserve them in museums or archives. The courtesy is also extended to other organizations outside the aerospace community, such as state and local governments, the academic community, and independent business entities. In the latter case, it is customary to fly only one item for the requesting organization to be used for display purposes.

(b) *Limitations.* In addition to §1214.602(c) of this part, U.S. national flags will not be flown as mementos except by U.S. Government sponsors.

(c) *Approval of Contents.* At least 60 days prior to the launch of a Space Shuttle flight, an authorized representative of each organization desiring mementos to be carried on the flight in the OFK must submit a letter or request describing the item(s) to be flown and the intended purpose or distribution. Letters should be directed to the cognizant NASA office as follows:

(1) Space Shuttle customers/users of any nature, to the Director of Transportation Services, Code MC, NASA Headquarters, Washington, DC 20546.

(2) Foreign organizations/individuals, and Department of Defense organizations/individuals (both other than as a Space Shuttle customer) and other Federal agencies to the Associate Administrator of External Relations, Code X, NASA Headquarters, Washington, DC 20546. Upon receipt of all requests, the cognizant offices will review and forward data to the Associate Director, Code AC, Johnson Space Center, Houston, TX 77058.

(3) All others (aerospace companies, state and local governments, the academic community, and non-space-related businesses) may send requests directly to the Associate Director, Code AC, Johnson Space Center, Houston, TX 77058. In the event OFK requests, on a particular flight, exceed OFK capability, priority consideration may be given to those entities having payloads on that flight. The listing of the proposed OFK contents for each flight is prepared at the Johnson Space Center and forwarded to the Associate Administrator for Space Flight approximately 30 days prior to launch for approval.

### §1214.604 Personal Preference Kit (PPK).

(a) *Purpose.* The PPK enables persons accompanying Space Shuttle flights to carry personal items for use as mementos. Only those individuals actually accompanying such flights (astronaut crew members, payload specialists, and space flight participants) may request authorization to carry personal items as mementos. These items must be carried in individually assigned PPK's.

(b) *Limitations.* The contents of a PPK must be limited to 20 separate items, with a total weight of 0.682 kilograms (1.5 pounds). Each item is allocated for a different recipient and distributed accordingly. The volume of a PPK must be contained in a 12.82 centimeters × 20.51 centimeters × 5.13 centimeters

(5″×8″×2″) bag provided by NASA. Increases in these limitations will be authorized only by the Associate Administrator for Space Flight.

(c) *Approval of Contents.* At least 60 days before the scheduled launch of a Space Shuttle flight, each person assigned to the flight who desires to carry items in a PPK must submit a proposed list of items and their recipients to the Associate Director, Johnson Space Center. The Associate Director will review the requests for compliance with this subpart and submit the crew members' PPK lists through supervisory channels to the Associate Administrator for Space Flight for approval. A signed copy of the Associate Administrator for Space Flight's approval will be returned to the Director, Johnson Space Center, for appropriate distribution.

### § 1214.605 Preflight packing and storing.

(a) Items intended for inclusion in OFK's or PPK's must arrive at the Johnson Space Center, Code AC, at least 45 days prior to the flight on which they are scheduled in order for them to be listed on the cargo manifest, packaged, weighed, and stowed aboard the Orbiter. Items must arrive at the Johnson Space Center prior to the 45-day limit even if the Associate Administrator for Space Flight's approval is still pending. Items not approved by the Associate Administrator for Space Flight will be returned to the requesting individual/organization.

(b) The Associate Director, Johnson Space Center, is responsible for the following:

(1) Securing the items while awaiting the launch on which they are manifested.

(2) Packaging, weighing, and stowing the items according to the manifests approved by the Associate Administrator for Space Flight.

### § 1214.606 Postflight disposition.

The Associate Director, Johnson Space Center, will:

(a) Receive and inventory all items flown in the OFK and PPK's following each Shuttle flight.

(b) Return the contents of the PPK's to the persons who submitted them.

(c) Return all other flown items to the submitting organizations with an appropriate letter of certification.

(d) Retain and secure mementos flown by the Agency for future use.

### § 1214.607 Media and public inquiries.

(a) *Official Flight Kit.* Information on the contents of OFK's will be routinely released to the media and to the public upon their request, but only after the contents have been approved by the Associate Administrator for Space Flight.

(b) *Personal Preference Kit.* Information on the contents of PPK's will be routinely released to the media and to the public upon their request immediately following postflight inventory.

(c) *Responsibility for Release of Information.* The Director of Public Affairs, Johnson Space Center, is responsible for the prompt release of information on OFK and PPK contents.

### § 1214.608 Safety requirements.

The contents of OFK's and PPK's must meet the requirements set forth in NASA Handbook 1700.7, ''Safety Policy and Requirements for Payloads Using the Space Transportation System (STS).''

### § 1214.609 Loss or theft.

(a) *Responsibility.* The National Aeronautics and Space Administration will not be responsible for the loss or theft of, or damage to, items carried in OFK's or PPK's.

(b) *Report of Loss or Theft.* Any person who learns that an item contained in an OFK or a PPK is missing shall immediately report the loss to the Johnson Space Center Security Office and the NASA Inspector General.

### § 1214.610 Violations.

Any item carried in violation of the requirements of this subpart shall become the property of the U.S. Government, subject to applicable Federal laws and regulations, and the violator may be subject to disciplinary action, including being permanently prohibited from use of, or, if an individual, from flying aboard the Space Shuttle or any other manned spacecraft of the National Aeronautics and Space Administration.

## Subpart 1214.7—The Authority of the Space Shuttle Commander

AUTHORITY: Pub. L. 85–588, 72 Stat. 426 (42 U.S.C. 2473, 2455; 18 U.S.C. 799); Art. VIII, TIAS 6347 (18 U.S.T. 2410).

SOURCE: 45 FR 14845, Mar. 7, 1980, unless otherwise noted.

### §1214.700 Scope.

This subpart establishes the authority of the Space Shuttle commander to enforce order and discipline during all flight phases of a Shuttle flight to take whatever action in his/her judgment is necessary for the protection, safety, and well-being of all personnel and on-board equipment, including the Space Shuttle elements and payloads. During the final launch countdown, following crew ingress, the Space Shuttle commander has the authority to enforce order and discipline among all on-board personnel. During emergency situations prior to liftoff the Space Shuttle commander has the authority to take whatever action in his/her judgment is necessary for the protection or security, safety, and well-being of all personnel on board.

[56 FR 27899, June 18, 1991]

### §1214.701 Definitions.

(a) *Space Shuttle Elements* consists of the Orbiter, an External Tank, two Solid Rocket Boosters, Spacelab, Upper Stage Boosters (Solid Spinning Upper Stage and Interim Upper Stages) and others as specified in NASA Management Instruction 8040.9.

(b) The *flight crew* consists of the commander, pilot, and mission specialist(s).

(c) A *flight* is the period from launch to landing of a Space Shuttle—a single round trip. (In the case of a forced landing the Space Shuttle commander's authority continues until a competent authority takes over the responsibility for the Orbiter and for the persons and property aboard.)

(d) The *flight-phases* consist of launch, in orbit, deorbit, entry, landing, and postlanding.

(e) A *payload* is a specific complement of instruments, space equipment, and support hardware/software carried into space to accomplish a scientific mission or discrete activity.

(f) *Personnel on board* refers to those astronauts or other persons actually in the Orbiter or Spacelab during any flight phase of a Space Shuttle flight (including any persons who may have transferred from another vehicle) and including any persons performing extravehicular activity associated with the mission.

[45 FR 14845, Mar. 7, 1980, as amended at 56 FR 27899, June 18, 1991]

### §1214.702 Authority and responsibility of the Space Shuttle commander.

(a) During all flight phases of a Space Shuttle flight, the Space Shuttle commander shall have the absolute authority to take whatever action is in his/her discretion necessary to:

(1) Enhance order and discipline,

(2) Provide for the safety and well being of all personnel on board, and

(3) Provide for the protection of the Space Shuttle elements and any payload carried or serviced by the Space Shuttle.

The commander shall have authority throughout the flight to use any reasonable and necessary means, including the use of physical force, to achieve this end.

(b) The authority of the commander extends to any and all personnel on board the Orbiter including Federal officers and employees and all other persons whether or not they are U.S. nationals.

(c) The authority of the commander extends to all Space Shuttle elements, payloads, and activities originating with or defined to be a part of the Space Shuttle mission.

(d) The commander may, when he/she deems such action to be necessary for the safety of the Space Shuttle elements and personnel on board, subject any of the personnel on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

[45 FR 14845, Mar. 7, 1980, as amended at 56 FR 27900, June 18, 1991]

### § 1214.703 Chain of command.

(a) The *Commander* is a career NASA astronaut who has been designated to serve as commander on a particular flight, and who shall have the authority described in § 1214.702 of this part. Under normal flight conditions (other than emergencies or when otherwise designated) the Space Shuttle commander is responsible to the Flight Director, Johnson Space Center, Houston, TX.

(b) The *pilot* is a career NASA astronaut who has been designated to serve as the pilot on a particular flight and is second in command of the flight. If the commander is unable to carry out the requirements of this subpart, then the pilot shall succeed to the duties and authority of the commander.

(c) Before each flight, the other flight crew members (Mission Specialists) will be designated by the Director of Flight Operations, Johnson Space Center, Houston, TX, in the order in which they will assume the authority of the commander under this subpart in the event that the commander and pilot are both not able to carry out their duties.

(d) The determinations, if any, that a crew member in the chain of command is not able to carry out his or her command duties and is, therefore, to be relieved of command, and that another crew member in the chain of command is to succeed to the authority of the commander, will be made by the Director of the Johnson Space Center.

[45 FR 14845, Mar. 7, 1980, as amended at 47 FR 3095, Jan. 22, 1982; 56 FR 27900, June 18, 1991]

### § 1214.704 Violations.

(a) All personnel on board a Space Shuttle flight are subject to the authority of the commander and shall conform to his/her orders and direction as authorized by this subpart.

(b) This regulation is a regulation within the meaning of 18 U.S.C. 799, and whoever willfully violates, attempts to violate, or conspires to violate any provision of this subpart or any order or direction issued under this subpart shall be fined not more than $5,000 or imprisoned not more than 1 year, or both.

[45 FR 14845, Mar. 7, 1980, as amended at 56 FR 27900, June 18, 1991]

## Subpart 1214.8—Reimbursement for Spacelab Services

SOURCE: 50 FR 30809, July 30, 1985, unless otherwise noted.

### § 1214.800 Scope.

This subpart 1214.8 establishes the special reimbursement policy for Spacelab services provided to Space Transportation System (STS) customers governed by the provisions of subpart 1214.1 or subpart 1214.2. It applies to flights occurring in the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988). The following five types of Spacelab flights are available to accommodate payload requirements:

(a) Dedicated-Shuttle Spacelab flight [Ref. § 1214.804(e)].

(b) Dedicated-pallet flight [Ref. § 1214.804(f)].

(c) Dedicated-FMDM/MPESS (flexible multiplexer-demultiplexer/multipurpose experiment support structure) flight [Ref. § 1214.804(f)].

(d) Complete-pallet flight [Ref. § 1214.804(g)].

(e) Shared-element flight [Ref. § 1214.804(h)].

### § 1214.801 Definitions.

(a) *Shuttle policy*. The appropriate subpart (1214.1 or 1214.2) governing use of the Shuttle. Determinaltion of the appropriate subpart for each customer shall be made by reference to §§ 1214.101 and 1214.201.

(b) *Spacelab elements*. Pallets (3-meter segments), pressurized modules (long or short), and the FMDM/MPESS (1-meter cross-bay structure), all as maintained in the NASA-approved Space lab configuration.

(c) *Standard flight price*. The price for standard Shuttle and standard Spacelab services provided. If a customer elects not to use a portion of the standard services, the standard flight price shall not be affected.

(d) *Shuttle load factor*. The parameter used to compute the customer's pro

rata share of Shuttle services and used to compute the Shuttle charge factor. Means of computing this parameter are defined in §1214.813.

(e) *Spacelab load fraction*. The parameter used to compute the customer's pro rata share of each element's services and used to compute the element charge factor. Means of computing this parameter are defined in §1214.813.

(f) *Shuttle charge factor and element charge factor*. Parameters used in computation of the customer's flight price. Means of computing these parameters are defined in §1214.813.

(g) *Dedicated flight price for Spacelab missions*. (1) The single-shift operation dedicated flight price for Spacelab missions is identical to the Shuttle dedicated flight price as defined in the Shuttle policy.

(2) The two-shift operation dedicated flight price for Spacelab missions is the sum of:

(i) The Shuttle dedicated flight price as defined in the Shuttle policy.

(ii) The standard price for additional services required to support a second shift of on-orbit operations.

### §1214.802 Relationship to Shuttle policy.

Except as specifically noted, the provisions of the Shuttle policy also apply to Spacelab payloads. Although some language in the Shuttle policy is Shuttle-specific, it is the intent of this subpart 1214.8 that the Shuttle policy be applied to Spacelab also, including the policy on patent and data rights. However, in the event of any inconsistencies in the policies, the Spacelab policy will govern with respect to Spacelab services.

### §1214.803 Reimbursement policy.

(a) *Reimbursement basis*. (1) This policy is established for the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988).

(2) *Standard flight price*. During this phase, customers covered by subpart 1214.1 or subpart 1214.2 shall reimburse NASA for standard Spacelab services an amount which is a pro rata share of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission.

(ii) The standard price for use of the selected Spacelab elements during the second phase of STS operations.

(3) The price shall be held constant for flights during this phase of STS operations.

(4) Reimbursement policies for subsequent phases of STS operations will be developed after NASA has obtained more operational experience.

(b) *Escalation*. Payments shall be escalated in accordance with the Shuttle policy.

(c) Customers shall reimburse NASA an amount which is the sum of the customer's standard flight price and the price for all optional services provided.

(d) *Earnest money*. For those customers required to pay earnest money by the Shuttle policy, the total earnest money payment per payload for Spacelab payloads (including Shuttle services) shall be the lesser of $150,000 or 10% of the customer's estimated standard flight price. Earnest money will be applied to the first payment for standard services made for each payload by the customer or will be retained by NASA if a Launch Services Agreement is not signed.

### §1214.804 Services, pricing basis, and other considerations.

(a) *Mandatory use of dedicated-Shuttle Spacelab flight*. (1) Customers shall be required to fly under the provisions of paragraph (e) of this section if the customer requires exclusive use of any of the following:

(i) Pressurized module (long or short).

(ii) Three pallets in the ''1+1+1—rdquo; configuration.

(iii) Four pallets in the ''2+2'' configuration.

(2) In the cases cited in paragraph (a)(1) of this section, if the customer requests, NASA will attempt to find compatible sharees to fly with the customer's payload. If NASA is successful, the customer's Shuttle standard flight price shall be the greater of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission less adjusted reimbursements (as defined in the Shuttle policy) from sharees actually flown.

(ii) The computed shared-flight Spacelab flight price for the customer's payload.

(b) *Apportionment and assignment of services.* Subject to NASA approval, a customer contracting for a Spacelab flight shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(c) *Postponement and termination.* (1) A customer may postpone the flight of a Spacelab payload one time with no additional charge if postponement occurs more than 18 months before the scheduled launch date.

(2) Postponement or termination fees for Spacelab payloads shall consist of the sum of:

(i) A fee for Shuttle transporation.

(ii) A fee for use of the Spacelab elements.

(3) *Shuttle transportation fee.* Customers shall be governed by the provisions of the Shuttle policy with the following exception. When computing occupancy fees for shared-element payloads, the ''adjusted reimbursements from other customers'' shall be defined as the adjusted reimbursements from those customers who subsequently contract for the use of the element being shared.

(4) *Spacelab use fee.* The postponement and termination fees for use of the Spacelab elements are computed as a percentage of the customer's price for use of the Spacelab elements and shall be based on the table below. When postponement or termination occurs less than 18 months before launch, the fees shall be computed by linear interpolation using the points provided.

| Time when postponement or termination occurs, months before scheduled launch date | Fee for use of Spacelab element(s), percent of price for use of element(s) | |
|---|---|---|
| | Postponement | Termination |
| Dedicated Flights, Dedicated Elements, and Dedicated FMDM/MPESS | | |
| 0 | 75 | 100 |
| 3 | 60 | 85 |
| 12 | 14 | 20 |
| 18 | 5 | 10 |
| More than 18 | 5 | 10 |
| Complete Pallets and Shared Elements | | |
| Less than 8 | 95 | 100 |
| 8 | 95 | 100 |
| 9 | 32 | 95 |
| 12 | 18 | 80 |
| 18 | 5 | 10 |
| More than 18 | 5 | 10 |

(5) At the time of signing of the Launch Services Agreement, NASA shall define a payload removal cutoff date (relative to the launch date) for each Spacelab payload to be flown on a shared flight. A customer may still postpone or terminate a flight after the payload's cutoff date; however, NASA shall not be required to remove the payload before flight.

(d) *Minor delays.* The minor delay provisions of the Shuttle policy shall apply only to those Spacelab payloads whose Shuttle load factor is equal to or greater than 0.05.

(e) *Dedicated-Shuttle Spacelab flight.* (1) A dedicated-Shuttle Spacelab flight is a Shuttle flight sold to a single customer who is entitled to select the Spacelab elements used on the flight.

(2) In addition to the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated-Shuttle Spacelab flights and form the basis for the standard flight price:

(i) Use of the full standard services of the Shuttle and the Spacelab elements selected.

(ii) One day of one-shift on-orbit operations.

(iii) Standard mission destinations as defined in the Shuttle policy.

(iv) Launch within a prenegotiated 90-day period in accordance with the dedicated flight scheduling provisions of the Shuttle policy.

(v) The available payload operations time of two NASA-furnished mission specialists.

(3) Customers contracting for a dedicated-Shuttle Spacelab flight shall reimburse NASA an amount which is the sum of:

(i) The one-shift operation dedicated flight price for a 1-day Spacelab mission.

(ii) The price for the use of all Spacelab elements used (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(f) *Dedicated 3-meter pallets and dedicated FMDM/MPESS.* (1) A dedicated pallet (or a dedicated FMDM/MPESS) is one which is sold to a single customer and which includes all Spacelab hardware necessary to permit it to be flown on any shared Shuttle flight as an autonomous payload (e.g., a dedicated 3-meter pallets may either be supplied with its own exclusive igloo or may fly without an igloo if it requires only standard Shuttle services).

(2) In addition to a pro rata share of the standard service listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated pallets (or dedicated FMDM/MPESS) and form the basis for establishing the standard flight price:

(i) A pro rata share of the Shuttle services normally provided, where the basis for proration is the customer's Shuttle load factor as defined in §1214.813(d)(1) for dedicated pallets and in §1214.813(e)(2) for dedicated FMDM/MPESS.

(ii) The exclusive services of the pallet (or FMDM/MPESS) and all Spacelab hardware provided to support the pallet (or FMDM/MPESS).

(iii) One day of one-shift on-orbit operations.

(iv) Launch to the standard mission destination of 160 nmi, 28.5° as defined in the Shuttle policy.

(v) Launch within a prenegotiated 90-day period in accordance with the shared-flight scheduling provisions of the Shuttle policy.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for a dedicated pallet (or FMDM/MPESS) flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the one-shift-operation dedicated flight price of a 1-day Spacelab mission.

(ii) The price for the use of the pallet (or FMDM/MPESS) selected (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(g) *Complete pallet.* (1) A complete Spacelab pallet is one which is sold to a single customer but flies with other Spacelab elements on a NASA or NASA-designated Spacelab flight and shares the common standard Spacelab services, e.g., shares an igloo with other pallets.

(2) In addition to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of complete pallets and form the basis for the standard flight price.

(i) The pallet's pro rata share of standard Shuttle services, where the basis of proration shall be the customer's Shuttle load factor as defined in §1214.813(f)(1).

(ii) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the customer's Shuttle load factor.

(iii) Mission destination selected by NASA in consultation with the customer.

(iv) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(v) Launch date established by NASA.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(vii) Use of the entire volume above a pallet.

(3) Users contracting for complete pallet flights shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift-operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day complete-pallet mission is the sum of the dedicated flight price for a 1-day two-shift mission and the charge for 6 extra days of two-shift on-obit operation.

(ii) The price for the use of a complete pallet, including all necessary

mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(h) *Shared element.* (1) A shared element is a Spacelab pallet or module which:

(i) Is shared by two or more customers on a NASA-designated Spacelab flight.

(ii) Shares common standard Spacelab services with other Spacelab elements on the same flight.

(2) In aditional to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of shared elements and form the basis for the standard flight price:

(i) For shared pallets, a pro rata share of the standard services provided by a pallet. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(i).

(ii) For shared modules, a pro rata share of the standard services provided by a long module flown on a dedicated-Shuttle Spacelab flight. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(ii). The type of pressurized module actually used to meet a customer's requirement for a shared module shall be determined by NASA subsequent to contract negotiations.

(iii) A pro rata share of the element's share of standard Shuttle services, where the basis for proration shall be the customer's Spacelab load fraction.

(iv) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the customer's Shuttle load factor as defined in § 1214.813(g)(1).

(v) Mission destination selected by NASA in consultation with the customer.

(vi) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(vii) Launch date established by NASA.

(viii) A pro rata share of the on-orbit operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for shared-element flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day shared-element mission is the sum of the dedicated flight price for a 1-day two-shift-mission and the charge for 6 extra days of two-shift on-orbit operations.

(ii) The product of the customer's element charge factor and the price for the use of the Spacelab element being used, including all necessary mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(i) *Common standard Spacelab services.* The following standard Spacelab services are common to all Spacelab flights:

(1) Use of Shuttle[1] and Spacelab hardware.

(2) Spacelab interface analysis.

(3) Kennedy Space Center (KSC) launch.[1]

(4) A five-person NASA flight crew consisting of commander, two pilots, and two mission specialists.

(5) Accommodations for a five-person flight crew.

(6) Prelaunch integration and interface verification of preassembled racks and pallets (Levels III, II, and I for NASA-furnished Spacelab hardware; Level I only for customer-furnished Spacelab hardware).

(7) Shuttle[1] and Spacelab flight planning.

(8) Payload electrical power.

(9) Payload environmental control.

(10) On-board data acquisition and processing services.

(11) Transmission of data to a NASA-designed monitoring and control facility via the basic STS Operational Instrumentation (OI) telemetry system.

(12) Use of NASA-furnished standard payload monitoring and control facilities.

(13) Voice communications between personnel operating the customer's payload and a NASA-designated payload monitoring and control facility.

[1] Typical standard Shuttle services repeated for clarity.

(14) NASA payload safety review.[1]

(15) NASA support of payload design reviews.[1]

(j) *Typical optional Spacelab services.* The following are typical optional Spacelab services:

(1) Use of special payload support equipment, e.g., instrument pointing system.

(2) Vandenberg Air Force Base (VAFB) launch.

(3) Nonstandard mission destination.

(4) Additional time on orbit.

(5) Mission-independent training, use of, and accommodations for all flight personnel in excess of five.

(6) Mission-dependent training of all NASA-furnished personnel and backups.

(7) Analytical and/or hands-on integration (and de-integration) of the customer's payload into racks and/or onto pallets.

(8) Unique integration or testing requirements.

(9) Additional resources beyond the customer's pro rata share.

(10) Additional experiment time or crew time beyond the customer's pro rata share.

(11) Special access to and/or operation of payloads.

(12) Customer unique requirements for; software development for the Command and Data Management Subsystem (CDMS) onboard computer, configuration of the Payload Operations Control Center (POCC), and/or CDMS utilized during KSC ground processing.

(13) Extravehicular Activity (EVA) services.

(14) Payload flight planning services.

(15) Transmission of Spacelab data contained in the STS OI telemetry link to a location other than a NASA-designated monitoring and control facility.

(16) Transmission of Spacelab data not contained in the STS OI telemetry link.

(17) Level III and/or Level II integration of customer-furnished Spacelab hardware.

(k) *Options.* The provisions of §§1214.102(e) and 1214.202(e) do not apply to Spacelab payloads.

### §1214.805 Unforeseen customer delay.

Should an unforeseen customer payload problem pose a threat of delay to the Shuttle launch schedule or critical off-line activities, NASA shall, if requested by the customer, make all reasonable efforts to prevent a delay, contingent on the availability of facilities, equipment, and personnel. In requesting NASA to make such special efforts, the customer shall agree to reimburse NASA the estimated additional cost incurred.

### §1214.806 Premature termination of Spacelab flights.

If a dedicated-Shuttle Spacelab flight, a dedicated-pallet flight, or dedicated-FMDM/MPESS flight is prematurely terminated, NASA shall refund the optional services charges for planned, but unused, extra days on orbit. If a complete-pallet or shared-element flight is prematurely terminated, NASA shall refund a pro rata share of the charges for planned, but unused, extra days on orbit to customers whose payload operations are, in NASA's judgment, adversely affected by such premature termination. The basis for proration shall be the customers' Shuttle load factor.

### §1214.807 Exceptional payloads.

Customers whose payloads qualify under the NASA Exceptional Program Selection Process shall reimburse NASA for Spacelab and Shuttle services on the basis indicated in the Shuttle policy.

### §1214.808 Standby payloads.

The standby payload provisions of the Shuttle policy do not apply to Spacelab flights.

### §1214.809 Short-term call-up and accelerated launch.

The short-term call-up and accelerated launch provisions of the Shuttle policy normally are not offered to Spacelab customers. NASA will negotiate any such customer requirements on an individual basis.

### §1214.810 Integration of payloads.

(a) The customer shall bear the cost of performing the following typical

Spacelab-payload mission management functions:

(1) Analytical design of the mission.

(2) Generation of mission requirements and their documentation in the Payload Integration Plan (PIP).

(3) Provision of mission unique training and payload specialists (if appropriate).

(4) Physical integration of experiments into racks and/or onto pallets.

(5) Provision of payload unique software for use during ground processing, on orbit, or in POCC operations.

(6) Supporting operations.

(7) Assuring the mission is safe.

(b) All physical integration (and deintegration) of payloads into racks and/or onto pallets will normally be performed at KSC by NASA. When the customer provides Spacelab elements, these physical integration activities may be done by the customer at a location chosen by the customer.

(c) With the exception of the restrictions noted in paragraph (b) of this section, customers contracting for dedicated-Shuttle and dedicated-pallet flights may perform the Spacelab-payload mission management functions defined in paragraph (a) of this section. NASA will assist customers in the performance of these functions, if requested. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(d) For complete pallets or shared elements, NASA will normally perform the Spacelab-payload mission management functions listed in paragraph (a) of this section. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(e) Integration of payload entities mentioned in paragraphs (b)–(d) of this section with NAS-furnished Spacelab support systems and with the Shuttle shall be performed by NASA as a standard service for all payloads flown on customer-furnished Spacelab elements. Customers shall be available to participate as required by NASA in these levels of integration. Customer equipment shall be operated only to the extent necessary for interface verification. Customers requiring additional payload operation after delivery of the payload to NASA shall negotiate such operation as an optional service.

### § 1214.811 Reflight guarantee.

(a) During the second phase of STS operations, there is no additional reflight premium for those shared-flight Spacelab payloads which can be accommodated on a standard Shuttle launch to 160 nmi, 28.5° as defined in the Shuttle policy and all dedicated-flight Spacelab payloads.

(b) NASA and the customer may negotiate appropriate reflight provisions (e.g., scheduling, reflight premiums) for payloads not covered by paragraph (a) of this section. Otherwise, no reflight services shall be provided.

(c) Reflight guarantees, if provided, must cover the customer's entire payload.

(d) Payloads covered by reflight guarantees shall be entitled to a reflight with no charge for standard Spacelab and Shuttle services if both the following occur:

(1) Through no fault of the customer or defect in the customer's payload, Spacelab systems (i.e., data, power, and cooling) are not within nominal specifications, as measured by NASA at normal Spacelab monitoring points, at the time of first turn-on of the customer's payload, all as defined in the Launch Services Agreement.

(2) The customer's mission objective is not achieved solely as a direct result of the occurrence, at the time of first turn-on of the customer's payload, of events described in paragraph (d)(1) of this section.

(e) If more than one reflight is required, no additional reflight premium shall be charged.

(f) If a payload being reflown was not initially covered by a reflight guarantee, the reimbursements for the reflight shall be the same as for a newly-scheduled launch.

### § 1214.812 Payload specialists.

(a) The use of customer-furnished payload specialists shall be subject to the approval of the NASA Administrator or the Administrator's designee.

(b) Customers with payloads whose Shuttle load factor is equal to or greater than 0.5 are entitled to request that a customer-selected payload specialist be flown with the customer's payload. Dedicated-flight customers are entitled to request the flight of two customer-selected payload specialists.

(c) NASA may approve the flight of a customer-selected payload specialist with payloads whose Shuttle load factor is less than 0.5 if, in NASA's judgment, there is sufficient scientific need to warrant such a flight.

(d) The standard Spacelab flight price is based on operation of the customer's payload by two NASA-furnished mission specialists. Accommodations for, and mission-independent training of, any payload specialists and backups required for the customer's mission shall be provided as optional services and shall be paid for by the customer. The price for this service shall be the same for both customer-furnished and NASA-furnished payload specialists.

### §1214.813 Computation of sharing and pricing parameters.

(a) *General.* (1) Computational procedures as contained in the following subparagraphs of this paragraph of this section shall be applied as indicated. The procedure for computing Shuttle load factor, charge factor, and flight price for Spacelab payloads replaces the procedure contained in the Shuttle policy.

(2) Shuttle charge factors as derived herein apply to the standard mission destination of 160 nmi altitude, 28.5° inclination. Customers shall reimburse NASA an optional services fee for flights to nonstandard destinations.

(3) The customer's total Shuttle charge factor shall be the sum of the Shuttle charge factors for the customer's individual (dedicated, complete, or shared) elements, with the limitation that the customer's Shuttle charge factor shall not exceed 1.0.

(4) Customers contracting for pallet-only payloads are entitled to locate minimal controls as agreed to by NASA in a pressurized area to be designated by NASA. There is no additional charge for this service.

(5) NASA shall, at its discretion, adjust up or down the load factors and load fractions calculated according to the procedures defined in this section. Adjustments shall be made for special space or weight requirements which include, but are not limited to:

(i) Sight clearances, orientation, or placement limits.

(ii) Clearances for movable payloads.

(iii) Unusual access clearance requirements.

(iv) Clearances extending beyond the bounds of the normal element envelope.

(v) Extraordinary shapes.

The adjusted values shall be used as the basis for computing charge factors and prorating services.

(b) *Definitions used in computations*—(1) $L_C$=Chargeable payload length, m. The total length in the cargo bay occupied by the customer's experiment and the Spacelab element(s) used to carry it.

(2) $W_C$=The weight of the customer's payload and the customer's pro rata share of the weight of NASA mission-peculiar equipment carried to meet the customer's needs, kg.

(c) *Dedicated-shuttle spacelab flight (1-day mission).* The total reimbursement is as defined in §1214.804(e)(3).

(d) *Dedicated-pallet flight (1-day mission).* (1) The Shuttle load factors and charge factors for dedicated-pallet flights are shown in table 1. Subject to other STS Spacelab structural limits, customers are entitled to utilize the payload weight capability of the pallets as indicated in table 1. Payload weights in excess of those shown are subject to NASA approval and may entail optional services charges.

TABLE 1—SHUTTLE LOAD FACTORS, CHARGE FACTORS, AND NOMINAL CAPACITIES FOR DEDICATED PALLETS

| Number of pallets | Load factor | | Charge factor | | Nominal payload capacity, kg | |
|---|---|---|---|---|---|---|
| | With Igloo | FMDM configuration | With Igloo | FMDM configuration | With Igloo | FMDM configuration |
| 1 | 0.228 | 0.189 | 0.305 | 0.252 | 2,325 | 2,950 |
| 2 | 0.392 | NA | 0.523 | NA | 4,470 | NA |
| 3-pallet train [1] | 0.556 | NA | 0.742 | NA | 4,435 | NA |
| 2+1 configuration | 0.594 | NA | 0.792 | NA | 7,750 | NA |

[1] Three pallets requiring the "1+1+1" configuration shall be flown on a dedicated flight basis [See § 1214.804(a)].

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(e) *Dedicated FMDM/MPESS flight (1-day mission)*—(1) *Shuttle charge factor.* The computed charge factor for dedicated FMDM/MPESS flights is defined as:

$$\frac{\text{Shuttle Load Factor}}{0.75}$$

(2) *Shuttle load factor.* (i) The Shuttle load factor is defined as the maximum of:

$$\frac{L_C}{18.29} \text{ or } \frac{W_C + 767}{29{,}478}$$

(ii) The minimum value of $L_C$ is based on the element length, plus clearances, and is 1.18 m.

(3) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(f) *Complete pallets (7-day mission).* (1) The Shuttle load factor and charge factor for a complete pallet are 0.198 and 0.228, respectively, and its payload weight capability is 2,583 kg. Subject to other STS or Spacelab structural limits, customers are entitled to utilize this payload weight capability. Payload weight in excess of 2,583 kg is subject to NASA approval and may entail optional service charges.

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(g)(3).

(g) *Shared elements (7-day mission)*—(1) *Spacelab load fractions and Shuttle load factors*—(i) *Pallet.* Spacelab load fraction is the greater of:

$$\frac{W_C}{2{,}583} \text{ or } \frac{\text{Payload volume, m}^3}{15}$$

Shuttle load factor is the greatest of:

$$\frac{W_C}{13{,}045} \text{ or } \frac{\text{Payload volume, m}^3}{76}$$

(ii) *Pressurized module.* Spacelab load fraction and Shuttle load factor are identical and are the greater of:

$$\frac{W_C}{4{,}319} \text{ or } \frac{2 \times (\text{Experiment volume}) + \text{Storage volume, m}^3}{40}$$

(2) *Shuttle charge factors and element charge factors for pressurized modules.* Shuttle charge factors and element charge factors are identical and are defined as follows:

| If the Spacelab load fraction (and Shuttle load factor) is— | The element charge factor and Shuttle charge factor shall be— |
|---|---|
| Less than 0.00435 | .005. |
| 0.00435 to 0.87 | Spacelab load fraction divided by 0.87. |
| Greater than 0.87 | 1.0. |

(3) *Element charge factors for shared pallets.*

| If the Spacelab load fraction is— | The element charge factor shall be— |
|---|---|
| Less than 0.0189 | 0.0218. |
| 0.0189 to 0.87 | Spacelab load fraction divided by 0.87. |
| Greater than 0.87 | 1.0. |

(4) *Shuttle charge factors for shared pallets.*

| If the Shuttle load factor is— | The Shuttle charge factor shall be— |
|---|---|
| Less than 0.00375 | 0.005. |
| 0.00375 to 0.75 | Shuttle load factor divided by 0.75. |
| Greater than 0.75 | 1.0. |

(5) *Total reimbursement.* (i) The customer's total reimbursement is as defined in §1214.804(h)(3).

(ii) If a customer contracts for portions of more than one element, the charges for the use of the elements shall apply individually to each element used.

(6) Experiment volume in the pressurized module is defined to be the sum of the customer's payload volume in racks and in the center aisle.

(i) Rack volume is defined relative to basic Air Transportation Rack (ATR) configurations. The customer's rack volume shall be defined as the volume of one or more rectangular parallelepipeds (rectangular-sided box) which totally enclosed the customer's payload. Width dimensions shall be either 45.1 or 94.0 centimeters. Height dimensions shall be integral multiples of 4.45 centimeters. Depth dimensions shall be 61.2 or 40.2 centimeters.

(ii) Center aisle space volume is defined as the volume of a rectangular parallelepiped which totally encloses the customer's payload. No edge of the parallelepiped shall be less than 30 centimeters in length.

(7) Storage volume in the pressurized module is defined as the volume of one or more rectangular parallelepipeds enclosing the customer's stowed payload. No edge of the parallepiped(s) shall be less than 30 centimeters in length.

(8) Volume of the customer's pallet-mounted payload is defined as the volume of a rectangular parallelepiped enclosing the pallet payload and customer-dictated mounting hardware. No edge of the parallelepiped shall be less than 30 centimeters in length.

## Subpart 1214.9—Use of Small Self-Contained Payloads

SOURCE: 45 FR 73023, Nov. 4, 1980, unless otherwise noted.

### §1214.900 Scope.

This subpart sets forth the policy on Space Shuttle services that are provided by NASA to users of Small Self-Contained Payloads (SSCP's).

[56 FR 47146, Sept. 18, 1991]

### §1214.901 Relation to subparts 1214.1 and 1214.2.

This subpart governs the provision of Space Shuttle services for SSCP's; subparts 1214.1 and 1214.2 are not applicable.

[56 FR 47146, Sept. 18, 1991]

### §1214.902 Definitions.

(a) U.S. Government users are defined as all agencies of the U.S. Government, including NASA.

(b) SSCP's are small (200 pounds or less and 5 cubic feet or less) scientific research and development payloads flown on a space-available basis in a NASA-supplied standard container under the provisions of this subpart. Such payloads may be composed of one or more experiments in the same container.

(c) Classes of SSCP's are defined as follows:

(1) Class I payloads are payloads flown for scientific educational purposes by a recognized educational institution or in support of a recognized broad-participation scientific educational process (e.g., science fairs). Users with Class I payloads are encouraged to publish results of their work in the open literature.

(2) Class II payloads are payloads that do not come under the Class I definition and are flown by users other than U.S. Government users. A multiclass payload containing a Class II experiment will be considered a Class II payload.

(3) Class III payloads are payloads flown by U.S. Government users that do not come under the Class I definition. A multiclass payload containing Class I and III experiments only will be considered a Class III payload.

(d) A small self-contained payload user is an individual or entity that has either signed a launch services agreement with NASA or is eligible to enter into negotiations to do so on the basis of payment (by the user or others) of earnest money to NASA (or, in the case of a U.S. Government user, has submitted a letter of intent). If more than one individual or entity enters into a joint venture or other arrangement to fly their experiments in one NASA container, one individual or entity shall be designated by them as their agent. This agent shall be the sole ''user'' for that payload, with full authority to represent every individual or entity which has an interest in that container.

(e) Standard services provided to all SSCP users are listed in § 1214.911.

(f) Optional services are additional services provided to individual users at the request of the user and at the discretion of NASA.

(g) Dual payloads are two SSCP's belonging to the same user for which the user has specified, in the launch services agreements, a requirement that they be flown on the same flight. Each of the payloads shall be completely autonomous and no interconnection of dual payloads shall be permitted.

(h) Undue administrative delay on the part of NASA is defined as a delay caused by NASA's failure to perform its administrative functions in the contracting process in a reasonable time, as determined by NASA. Delays caused by the parties' inability to agree to contract terms and conditions are specifically excluded from this definition.

### § 1214.903 Conditions of use.

(a) Users' payloads must be flown in a NASA-supplied standard container.

(b) SSCP's shall be used only to conduct experiments of a scientific research and development nature.

(c) All users shall be required to furnish NASA with sufficient information to ensure Shuttle safety. NASA shall reserve the right to inspect and/or test any and all materials, components, and elements of the payload at any time.

(d) All users shall be required to furnish NASA with sufficient information to verify peaceful purposes and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

(e) NASA shall reserve the right to reject any payload which, in the opinion of the NASA Administrator, would be contrary to the spirit of this program or NASA's mission.

(f) To assure humane treatment, all experiments using live animals must have the approval of the Life Sciences Division, Office of Space Science, NASA Headquarters.

### § 1214.904 Reimbursement policy.

(a) *Earnest money*. (1) Earnest money shall be paid to NASA by users (except U.S. Government users) with Class I or Class II payloads prior to launch services contract negotiations. The earnest money, which will be $500 per payload, shall be applied to the user's price or retained by NASA.

(2) U.S. Government users shall submit a letter of intent, signed by an authorized party, to initiate the process of contracting for an SSCP flight.

(b) *Reimbursement by non-NASA users.* (1) All users shall be charged on a fixed-price basis.

(2) The price for all payloads not covered by § 1214.910 shall be as designated below.

PRICE FOR STANDARD SERVICES

| Weight | | Volume | | Price |
|---|---|---|---|---|
| Pounds | Kilograms | Cu. ft. | Cu. Meters | |
| 200 | 90.72 | 5.0 | 0.142 | $27,000 |
| 100 | 45.36 | 2.5 | 0.071 | 14,000 |
| 60 | 27.22 | 2.5 | 0.071 | 8,000 |

(3) Subsequent to FY 1991, NASA may adjust the prices for the flight of SSCP's. Such adjustments shall not affect launch services agreements already in force. Except as provided for in § 1214.910, prices charged shall be the price in effect at the time of signing of the launch services agreement.

(4) NASA shall be reimbursed an amount which is the sum of the price for standard services and the price for optional services.

(5) A separate launch services agreement shall be signed for each payload. At the time a launch services agreement is signed, the user shall reimburse NASA 10% of the price for standard services. This reimbursement shall

be in addition to any earnest money already paid.

(6) The user shall reimburse NASA an additional 40% of the price for standard services at the later of:

(i) The time of signing of the launch services agreement, or

(ii) Eighteen months before the earliest acceptable launch date for the payload.

(7) The balance of the reimbursement for standard services, less earnest money payments, shall be made on the date designated for delivery of the payload to the launch site.

(8) Payment for any optional services shall be due on receipt of NASA's billing and shall be made prior to NASA's provision of the service.

(c) *Postponement.* (1) A postponement by the user shall be defined to occur if the user:

(i) With no undue administrative delay on the part of NASA, fails to execute the addendum to the launch services agreement described in §1214.905(d) either at the time of signing of the launch services agreement or by 18 months before the earliest acceptable launch date, whichever is later; or

(ii) Refuses to accept a tentative flight assignment which, in NASA's judgment, meets the user's stated needs; or

(iii) Fails to deliver the payload to the launch site by the designated time; or

(iv) Declines or is unable to fly the payload on a given flight after having accepted a tentative flight assignment; or

(v) Requests a delay in the earliest acceptable launch date for payload. (Only changes to later dates shall be permitted.)

(2) *Postponement fees for non-NASA users.* (i) Users who postpone the flight of a payload shall reimburse NASA a postponement fee which is the sum of the estimated cost of optional services to be repeated and a fee for standard services.

(ii) A user may postpone the flight of a payload once without incurring a fee for standard services.

(iii) If the second and subsequent SSCP user-initiated postponements occur before the date designated for payload delivery to the launch site, the fee for standard services shall be 5% of the price for standard services. If the second and subsequent user-initiated postponements occur on or after the date designated for payload delivery to the launch site, the fee for standard services shall be 20% of the price for standard services.

(iv) Postponement fees shall be payable on receipt of NASA's billing.

(3) *Rescheduling after a postponement by the user.* Rescheduling of a payload after a user postponement shall be accomplished by establishing a new earliest acceptable launch date. A rescheduled payload shall retain its original position in the flight assignment queue awaiting tentative flight assignment.

(4) A user may not postpone after the container is installed in the Shuttle.

(d) *Cancellation fees for non-NASA users.* (1) Users who cancel the flight of a payload shall reimburse NASA a cancellation fee which is the sum of the estimated cost of optional services performed by NASA prior to the notification of cancellation, including any cancellation costs, and a fee for standard services. In addition, NASA shall retain the earnest money paid for the payload.

(i) If a user cancels after signing a launch services agreement but before the date designated for payload delivery to the launch site, the fee for standard services shall be 10% of the user's standard services price.

(ii) If a user cancels on or after the date designated for payload delivery to the launch site, the fee for standard services shall be 50% of the user's standard services price.

(2) A user may not cancel after the container is installed in the Shuttle.

(3) If flight of a payload which has been previously postponed is cancelled, the cancellation fee shall be the larger of the cancellation fee which would have been applicable at the time of any prior postponement or the cancellation fee calculated at the time of cancellation.

(4) Cancellation fees shall be payable on receipt of NASA's billing.

[45 FR 73023, Nov. 4, 1980, as amended at 56 FR 47146, Sept. 18, 1991]

**§ 1214.905 Flight scheduling.**

(a) NASA receipt of the user's earnest money or letter of intent for one or more payloads shall be the basis for defining the payload(s) position in a temporary queue designated as the earnest money queue.

(b) Signing of a launch services agreement and NASA's receipt of the first progress payment shall enter the payload covered by the agreement into a flight assignment queue. The payload's position in this queue shall be determined as follows:

(1) If a launch services agreement is signed within 18 months after NASA receipt of earnest money or letter of intent, the payload shall remain ahead of all payloads that entered the earnest money queue later than it did.

(2) If the launch services agreement is not signed within 18 months after NASA receipt of earnest money or letter of intent, the earnest money date shall be redefined to be 18 months before the date of the launch services agreement signing.

(3) If the user changes a payload's user class designation after signing a launch services agreement, the earnest money payment date shall be redefined to be the date of the user class change.

(4) The 18-month periods defined in §§ 1214.905(b)(1) and 1214.905(b)(2), shall be extended to the extent that the user's failure to sign the launch services agreement is a result of undue administrative delay on the part of NASA.

(c) At the time of signing, the launch services agreement shall designate:

(1) The user class of the payload.

(2) The general nature of the payload.

(3) The size and weight of the payload.

(4) The price for standard services to be provided.

(5) The earliest acceptable launch date as selected unilaterally by the user.

(d) Not less than 18 months before the user's earliest acceptable launch date or at the signing of the launch services agreement, whichever is later, an addendum to the launch services agreement shall be signed by NASA and the user. The addendum shall designate:

(1) Any apportionment or assignment of the payload.

(2) A description of the payload.

(3) Any restrictions on the type of Shuttle flight appropriate for flying the payload, including any firm requirement to fly on a single flight as a dual payload with one other of the user's payloads.

(4) The optional services to be provided by NASA and the price of those services.

(5) The means of compliance with the provisions of § 1214.908 regarding significant impact on public health, safety or welfare.

(e) If, after attempting to negotiate with the user, it is NASA's opinion that the parties will be unable to agree on the terms of the addendum, NASA may terminate further negotiations. This event will be considered a cancellation by the user and the provisions of § 1214.904(d) shall apply.

(f) NASA shall not be obligated to perform any standard or optional services, including flight scheduling and placement of the payload on the Shuttle, if the user has not signed the Addendum to the launch services agreement and has not made all payments current according to the provisions of § 1214.904(b).

(g) Approximately 1 year before a planned Shuttle launch, NASA shall estimate the number of spaces available for SSCP's, make tentative flight assignments, and establish dates for payload delivery to the launch site.

(h) Payload tentative flight assignment shall be made on a rotation basis by user class. The continuing rotation sequence by class shall be II, I, II, III. If no payloads of a given class are available at the time of tentative flight assignment, a payload of the next class in the rotation shall be assigned to the available space.

(i) When making tentative flight assignments, NASA shall consider only those payloads whose earliest acceptable launch dates are on or before the Shuttle ''firm launch data'' as defined in § 1214.102(c)(2). (Shuttle flights normally occur on the ''firm launch date'' or within 60 days thereafter.)

(j) Users' payloads shall be assigned on the basis of their positions in the

flight assignment queue within each class with the following exceptions:

(1) If the available flight does not meet the user's requirements defined pursuant to §1214.905(d)(3), the payload shall not be assigned to the flight but shall retain its position in the flight assignment queue until a suitable flight becomes available.

(2) A single user may receive tentative flight assignments for no more than two payloads in the same class out of any group of 20 payloads assigned (all classes combined) if there are other payloads available for assignment. However, all the provisions of this subpart shall apply individually to each payload.

(3) Dual payloads shall become eligible for tentative flight asssignment when the latter of the two payloads becomes eligible for tentative flight assignment in the class rotation sequence. If only one space is available on the flight under consideration, a payload of the next available class in the rotation sequence shall be assigned and the dual payloads shall both be assigned to the next compatible flight, provided that the requirements of §§1214.905(j)(2) and 1214.905(m) are maintained.

(k) Once an SSCP has been given a tentative flight assignment, it shall not be bumped from a flight as a result of another SSCP user's subsequent signing of a launch services agreement or another SSCP user's postponement.

(l) An SSCP tentatively assigned to a flight may be bumped by NASA as a result of other Shuttle operational considerations. Should this be necessary, bumping shall be done on a last-on, first-bumped basis. If either of a pair of duel payloads is bumped, the remaining payload of the pair shall also be bumped.

(m) Payloads being reflown pursuant to §1214.907 and payloads bumped by NASA after tentative flight assignment shall have flight assignment priority, in that order, on subsequent flights over all other SSCP's including those already assigned to other flights.

(n) The date for payload delivery to the launch site shall normally be 2 months before the Shuttle ''firm launch date.'' However, NASA may designate a later date.

(o) Users shall not use third-party or joint venture arrangements to attempt to circumvent the intent of this paragraph.

[45 FR 73023, Nov. 4, 1980, as amended at 56 FR 47146, Sept. 18, 1991]

### §1214.906 Transfer of ownership, apportionment and assignment of services.

(a) Prior to the signing of a launch services agreement, users shall be permitted a one-time transfer, to a third party, of ownership of the eligibility to enter into negotiations with NASA for the flight of a SSCP, subject to NASA approval of the transfer. Subsequent transfers by the third party shall not be allowed.

(b) Transfer of ownership shall not result in a change in position in the earnest money queue.

(c) Subject to NASA approval, SSCP users shall be permitted to apportion and assign services to others.

(d) U.S. Government users shall not transfer to others the eligibility to negotiate a launch services agreement.

(e) NASA shall negotiate with only one responsible person or entity for the use of each NASA container. At the time the launch services agreement is negotiated, the user shall identify a single payload manager for the entire payload to be flown in the container.

(f) All requests relating to transfer of ownership, apportionment, or assignment of services must be made in writing to the Director of Transportation Services, and must: (1) Be signed by an authorized representative of the owner of record; and (2) be signed by an authorized representative of all other parties involved in the transaction acknowledging and accepting the provisions of the relevant launch services agreement and this subpart 1214.9 (and, for ownership transfers, acknowledgment that no further transfers are allowed).

[45 FR 73023, Nov. 4, 1980, as amended at 56 FR 47146, Sept. 18, 1991]

### §1214.907 Reflight.

(a) NASA will provide a one-time reflight of the user's payload at no additional charge for SSCP standard services, if all the following occur:

(1) Through no fault of the user (including all the user's related entities, such as the user's contractors, subcontractors, agents, and assignees), the standard SSCP systems are not within nominal specifications, as measured by NASA, at the time of first turn-on in orbit of the user's payload.

(2) The user's mission objective(s) is/are not achieved solely as a direct result of the occurrence, at the time of first turn-on of the user's payload, of events described in paragraph (a)(1) of this section.

(3) The payload returns safely to Earth, or a second, essentially identical, payload is provided by the user.

(b) Users entitled to a reflight shall be provided with a dollar credit towards future optional SSCP services, or a refund, for any unused optional SSCP services purchased and paid for on the Shuttle flight which entitles the user to a reflight.

[56 FR 47147, Sept. 18, 1991]

### § 1214.908 Patent and data rights.

NASA will not acquire rights to inventions, patents, or proprietary data privately funded by a user, or arising out of activities for which a user has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety, or welfare, NASA may obtain assurances from the user that the results will be made available to the public on terms and conditions reasonable under the circumstances.

### § 1214.909 Damage to payloads.

The user's price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government, its contractors, or other Space Shuttle users. The U.S. Government, therefore, shall assume no risk for damage or loss to the user's payload. The user shall assume that risk or obtain insurance protection against that risk. The user and anyone transferred, apportioned, or assigned the launch services will be required to agree to the cross-waiver of liability in the launch services agreement.

[56 FR 47147, Sept. 18, 1991]

### § 1214.910 Special provisions for users whose earnest money deposits or letters of intent were accepted prior to the effective date of this final rule.

(a) Within 30 days after publication of this final rule, NASA shall supply a copy of the rule to all users whose earnest money deposits or letters of intent were accepted prior to the effective date of the final rule.

(b) Such users may request in writing a refund of their earnest money provided the request is received by NASA within 90 days following publication of this final rule. There shall be no subsequent refund of earnest money.

(c) The price for all payloads for which both (1) earnest money or a letter of intent had been accepted prior to the effective date of this final rule, and (2) a launch services agreement is signed and an initial payment is received on or before 90 days after publication of this final rule shall be as follows:

PRICE FOR STANDARD SERVICES

| Weight | | Volume | | Price |
|---|---|---|---|---|
| Pounds | Kilograms | Cu. ft. | Cu. Meters | |
| 200 | 90.72 | 5.0 | 0.142 | $10,000 |
| 100 | 45.36 | 2.5 | 0.071 | 5,000 |
| 60 | 27.22 | 2.5 | 0.071 | 3,000 |

(d) Payloads not covered by a launch services agreement signed within 18 months after final publication of this subpart shall be governed by the provisions of § 1214.905(b)(2).

[45 FR 73023, Nov. 4, 1980, as amended at 56 FR 47147, Sept. 18, 1991]

### § 1214.911 Small self-contained payload standard services.

The following are standard services provided for small self-contained payloads:

(a) Flight in a NASA flight-qualified standard container.

(b) Use of a NASA shipping container.

(c) One ''on'' and one ''off'' signal provided on each of three NASA-provided inputs to the container.

(d) Choice of one standard NASA container atmosphere (vacuum, breathing air, inert gas, inert gas vented in space).

(e) Limited consultation on space systems provided by NASA at designated NASA centers.

(f) NASA payload safety reviews at a designated NASA center. (Safety shall not be compromised. Unusually complex safety reviews or testing/analysis require additional funding.)

(g) Pre-integration storage of the payload at KSC.

(h) Limited access to the payload prior to integration.

(i) Installation of the payload in the container and removal of the payload from the container after flight.

(j) Installation of the container in the Shuttle and removal of the container from the Shuttle after flight.

(k) KSC launch.

(l) On-orbit payload operational time consistent with the primary Space Shuttle mission.

(m) Brief postflight documentation of the Space Shuttle mission profile and payload operational times.

(n) Return of payload to the user at the launch site.

[45 FR 73023, Nov. 4, 1980, as amended at 56 FR 47147, Sept. 18, 1991]

### §1214.912 Small self-contained payload optional services.

(a) NASA may, at its sole discretion, approve or deny the provision of optional services to users. The price, terms, and conditions for such services shall be negotiated on a case-by-case basis.

(b) Users should be aware that requests for optional services can result in substantial additional charges and increased liability insurance requirements and/or affect NASA's ability to manifest the payload.

[56 FR 47147, Sept. 18, 1991]

## Subpart 1214.10—Special Policy on Small, Self-Contained Payloads (SSCP's) by Domestic Educational Institutions

SOURCE: 57 FR 61794, Dec. 29, 1992, unless otherwise noted.

### §1214.1000 Scope.

This subpart defines NASA's special policy for the use of Small, Self-Contained Payloads (SSCP's) by domestic educational institutions.

### §1214.1001 Goal.

The goal of NASA's policy on ''Use of Small, Self-Contained Payloads,'' as stated in subpart 1214.9, is to stimulate and encourage the use of space by a wide range of users, particularly those associated with education.

### §1214.1002 Pricing.

As an adjunct to that policy, and in furtherance of NASA's commitment to education, NASA is offering lower prices for standard launch services for SSCP's sponsored by domestic educational institutions that agree to certain provisions and can meet certain criteria. The prices for standard launch services for such payloads will be:

| Payload weight/volume | Price |
|---|---|
| 200 lbs/5.0 cf | $10,000 |
| 100 lbs/2.5 cf | 5,000 |
| 60 lbs/2.5 cf | 3,000 |

### §1214.1003 Qualifications.

For a payload to qualify for flight as a domestic educational institution payload'':

(a) The applying institution must be a U.S. public or nonprofit (section 501(c)(3) of the Internal Revenue Code) educational institution, which may include universities, colleges, community colleges, elementary or secondary schools, or university-affiliated education research foundations.

(b) The payload must be certified by an authorized official of the institution to be part of an educational or research project that is principally for the benefit of students, rather than nonstudents, such as faculty or research staff. The certification shall include a brief explanation of the educational aspects

of the payload project and how it principally benefits students.

(c) Payload experiments should involve students in all phases of the project, including concept development, initial planning, design, conduct, and analysis of the results of the experiments. Involvement of faculty or other professionals in a supervisory, advisory, or consultative relationship with the students is necessary.

(d) Projects may include; (1) Applied research;

(2) Basic research; and/or

(3) Other activities which have further educational uses beyond the immediate research effort.

### § 1214.1004 Results and data dissemination.

(a) A goal of this special category of payloads is to encourage student participation in various space science and technology experiments. Accordingly, subject to the exceptions listed below, NASA, unless otherwise agreed, will require all scientific or research results or data that are produced or obtained during the flight of a payload of this category to be made publicly available without restriction of disclosure and use no later than 2 years after the Shuttle mission on which the payload is flown. The exceptions are:

(1) Those results comprising an invention for which patent protection has been or will in a reasonable time be applied for.

(2) Data disclosing an invention prior to applying for patent protection thereon.

(b) Payloads of domestic educational institutions will be subject to all other provisions of subpart 1214.9, and each such institution will be required to sign a Launch Services Agreement with NASA.

(c) Domestic educational institutions proposing to fly SSCP experiments under this special policy should contact NASA Headquarters, Office of Space Flight, Code MB, Washington, DC 20546. Such applications must receive the approval of the NASA Education Division, Office of Human Resources and Education.

## Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

SOURCE: 54 FR 37940, Sept. 14, 1989, unless otherwise noted.

### § 1214.1100 Scope.

It is NASA policy to maintain an integrated Astronaut Corps. This subpart 1214.11 sets forth NASA procedures and assigns responsibilities for recruitment and selection of astronaut candidates. It applies to all pilot and mission specialist astronaut candidate selection activities conducted by the National Aeronautics and Space Administration.

### § 1214.1101 Announcement.

(a) Astronaut candidate opportunities Will be announced nationwide by the Johnson Space Center (JSC) and publicized periodically unless specifically canceled by NASA.

(b) Civilian applicants may apply at any time.

(c) JSC is responsible for implementing and refining the astronaut candidate application process to minimize the effort required to file and/or update applications.

(d) Military personnel on active duty must apply through and be nominated by the military service with which they are affiliated. Military nominees will not be part of the continuing pool of applicants. The military services will convene their internal selection boards and provide nominees to NASA. The military nominees will be evaluated by NASA and the military services will be notified promptly of those nominees who are finalists.

(e) The Assistant Administrator for Equal Opportunity Programs, NASA Headquarters, will provide assistance in the recruiting process.

### § 1214.1102 Evaluation of applications.

(a) All incoming applications will be reviewed by the JSC Human Resources Office to determine whether or not applicants meet basic qualifications. Those not meeting the basic qualification requirements will be so notified in writing and will not be eligible for further consideration. Those meeting the basic qualification requirements will

have their applications retained for review by a designated rating panel.

(b) The JSC Director, or designee, will appoint the rating panel composed of discipline experts who will review and rate qualified applicants as ''Qualified'' or ''Highly Qualified.''

(c) Efforts will be made to assure that minorities and females are included among these discipline experts.

(d) The criteria for each level will be developed by JSC and will serve as the basis for the ratings. The evaluation will be based on the quality of the individual's academic background and experience and the extent to which the individual's academic achievements, experience, and special qualifications relate to the astronaut candidate position. Reference information on those rated ''Highly Qualified'' will normally be obtained. The JSC Director of Human Resources will monitor this process to assure adherence to applicable rules and regulations.

(e) Those rated ''Highly Qualified'' may be required to obtain a Class I or Class II physical. Only medically qualified applicants will be referred for final evaluation and possible interview and selection. Those who are not medically qualified will be so informed and will not be eligible for further consideration.

### §1214.1103 Application cutoff date.

(a) The JSC Director, or designee, is responsible for identifying the need for additional astronaut candidates and for obtaining necessary approval to make selections.

(b) Once such approval has been obtained, the JSC Director will establish a cutoff date for the acceptance of applications. Applications received after the date of the request will be maintained and processed for the next selection. The cutoff date will normally occur every 2 years on or about July 1.

### §1214.1104 Evaluation and ranking of highly qualified candidates.

(a) The JSC Director will appoint a selection board consisting of discipline experts and such other persons as appropriate to further evaluate and rank the ''Highly Qualified'' applicants.

(b) Efforts will be made to assure that minorities and females are included on this board.

(c) The ''Highly Qualified'' applicants who are determined to be the ''Best Qualified'' will be invited to the Johnson Space Center for an interview, orientation, and detailed medical evaluation.

(d) Background investigations will normally be initiated on those applicants rated ''Best Qualified.''

### §1214.1105 Final ranking.

Final rankings will be based on a combination of the selection board's initial evaluations and the results of the interview process. Veteran's preference will be included in this final ranking in accordance with applicable regulations.

### §1214.1106 Selection of astronaut candidates.

The selection board will recommend to the JSC Director its selection of candidates from among those finalists who are medically qualified. The number and names of candidates selected to be added to the corps will be approved, as required, by JSC/ NASA management and the Associate Administrator for Space Flight, prior to notifying the individuals or the public.

### §1214.1107 Notification.

Selectees and the appropriate military services will be notified and the public informed. All unsuccessful qualified applicants will be notified of nonselection and given the opportunity to update their applications and indicate their desire to receive consideration for future selections.

## Subparts 1214.12–1214.16 [Reserved]

## Subpart 1214.17—Space Flight Participants

AUTHORITY: 42 U.S.C. 2473 and the National Aeronautics and Space Act of 1958, as amended.

SOURCE: 49 FR 17737, Apr. 25, 1984, unless otherwise noted.

### § 1214.1700 Scope.

This subpart establishes NASA policy and selection procedures for accommodation of space flight participants aboard flights of the Space Shuttle.

[56 FR 47148, Sept. 18, 1991]

### § 1214.1701 Applicability.

This subpart applies to NASA Headquarters and field installations.

### § 1214.1702 Relation to other part 1214 material.

Except as specifically noted, all regulatory provisions of Space Shuttle policies also apply to space flight participants. In the event of any inconsistencies in the policies, the regulatory policies established for crew members will govern with respect to space flight participants.

### § 1214.1703 Definitions.

(a) *Space flight participants.* All persons whose presence aboard a Space Shuttle flight is authorized in accordance with this regulation.

(b) *Committee.* The Space Flight Participant Evaluation Committee, established in NASA Headquarters for the purpose of directing and administering the program for space flight participants. The Committee consists of the following NASA Headquarters officials: Associate Deputy Administrator (Chair), General Counsel, Associate Administrator for External Relations, Associate Administrator for Management, Associate Administrator for Space Flight, Associate Administrator for Public Affairs and Assistant Administrator for Equal Opportunity Programs.

[56 FR 47148, Sept. 18, 1991]

### § 1214.1704 Policy.

(a) NASA policy is to provide Space Shuttle flight opportunities to persons (individuals outside the professional categories of NASA astronauts and payload specialists) whose presence onboard the Space Shuttle is not required for operation of payloads or for other essential mission activities, but is determined by the Administrator of NASA to contribute to other approved NASA objectives or to be in the national interest. However, flight opportunities for space flight participants will not be available in the near term. NASA will assess Shuttle operations and mission and payload requirements on an annual basis to determine when it can begin to allocate and assign space flight opportunities for future space flight participants, consistent with safety and mission considerations. When NASA determines that a flight opportunity is available for a space flight participant, first priority will be given to a ''teacher in space,'' in fulfillment of space education plans.

(b) To be considered for selection as space flight participants, applicants must:

(1) Be free of medical conditions which would either impair the applicant's ability to participate in, or be aggravated by, space flight, as determined by NASA physicians.

(2) Be willing to undergo appropriate background investigation.

(3) Be willing to undergo necessary training.

(4) Meet additional requirements that may be stated in Announcements of Opportunity (AO) soliciting applications for particular spaceflights.

(c) Persons accepted as space flight participant candidates will enter into an agreement with NASA for the period of training, flight, debriefing, and post-flight activities. The agreements will cover such pertinent matters as, but not limited to, responsibilities and authorities of the respective parties, compensation where appropriate, insurance, and liability.

(d) Typically the selection of space flight participants will be based on their comparative abilities to fulfill the objectives and purposes stated in Announcement of Opportunities (AO's) covering one or more Space Shuttle missions in which their participation is desired. A NASA-designated outside review panel will evaluate the qualifications of applicants to select those who most appropriately meet those purposes of participant flight associated with the particular AO. NASA will retain the authority to make final selection of space flight participants for flight training and eventual flight from among those applicants rated most highly in the review process. NASA will encourage the participation of a

wide and diverse array of participants, including women and minorities.

[49 FR 17737, Apr. 25, 1984, as amended at 56 FR 47148, Sept. 18, 1991]

### § 1214.1705 Selection of space flight participants.

(a) The agency will publicly announce each space flight participant opportunity through appropriate means, including notice in the FEDERAL REGISTER and press releases. Each such Announcement of Opportunity will include a listing of basic qualification requirements to be met (including those of § 1214.1704(b)), a statement of the specific National Aeronautics and Space Act purposes to which this opportunity is directed, what information is required of applicants to demonstrate their ability to fulfill those purposes, the criteria on which applicants will be judged, and administrative information such as to whom applications should be directed, the opening and closing dates for applications, and any other information or matters determined to be pertinent to the program in general and/or the specific flight.

(b) All applications received in response to the AO will be screened to eliminate those applicants not meeting the basic qualification requirements.

(c) Remaining applications will be forwarded to the outside review panel established for the announcement in question and composed of members appropriate to the specific purposes stated in that announcement. The review panel will evaluate all the applications and recommend to NASA a list of those applicants who appear most likely to meet the purposes.

(d) NASA selection of applicants qualified to undergo necessary training and be certified for flight will be made by the Committee, based upon criteria that include:

(1) Recommendation of the outside review panel.

(2) Ability to undergo successfully the necessary period of training to ensure adaptation to flight experience and mission activities.

(3) Ability to pass medical and psychological examinations to minimize the possibility of hazard to persons or missions.

(4) Adaptability to living and working in space.

(5) Willingness to enter into an agreement with NASA covering pre-flight, flight, and post-flight activities, with individual rights and responsibilities set forth in that agreeement.

(6) Satisfactory completion of a background investigation conducted to NASA's standards as adjudicated by the NASA Security Officer.

(e) The Committee will submit a list of those candidates suitable for selection to the NASA Administrator, who will select the requisite number to undergo the necessary training to prepare them for space flight.

(f) Those candidates who successfully complete the training will become qualified as space flight participants. Flight assignments will be made by the Administrator from this qualified group. NASA reserves the right to solicit additional space flight participant applications, if necessary.

(g) Authority to officially designate candidates for training, certify candidates as qualified space flight participants, and assign space flight participants to specific Space Shuttle flights is reserved to the Administrator.

### § 1214.1706 Program management.

The Associate Administrator for Space Flight is responsible for program management under the direction of the Committee chairperson.

### § 1214.1707 Media and public inquiries.

(a) The Associate Administrator for External Relations will respond to all inquiries directed to the agency concerning space flight participants and the process by which they are selected.

(b) The names of all applicants will be withheld from public release until the space flight participants are selected by the Administrator.

## PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

### Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

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AUTHORITY: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

SOURCE: 48 FR 9845, Mar. 9, 1983, unless otherwise noted.

## Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

### § 1215.100 General.

The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to mobile terrestrial users such as aircraft or balloons. It is the objective of NASA to operate as efficiently as possible with the TDRSS. This is to the mutual benefit of all users. Such user consideration will permit NASA and non-NASA service to be delivered without compromising the mission objectives of any individual user. To encourage users toward achieving efficient TDRSS usage, this reimbursement policy has been established to purposely influence users to operate with TDRSS in the most efficient and orderly manner possible. Additionally, the reimbursement policy is designed to comply with the Bureau of the Budget Circular A–25 on User Charges, dated September 23, 1959, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

[56 FR 28048, June 19, 1991]

### § 1215.101 Scope.

This subpart sets forth the policy governing TDRSS services provided to non-U.S. government users and the reimbursement for rendering such services. It excludes TDRSS services provided as standard or optional services to Space Transportation System (STS) users under existing policy for Shuttle and Spacelab (14 CFR subparts 1214.1, 1214.2, and 1214.8); i.e., user command and telemetry support, which utilizes and is a part of the Shuttle or Spacelab communications system, is a Shuttle/Spacelab service. Cooperative missions are also not under the purview of this subpart. The arrangements for TDRSS services for cooperative missions will be covered in a Memorandum of Understanding (MOU), as a consequence of negotiations between NASA and the other concerned party. Any MOU which includes provision for any TDRSS service will require signatory concurrence by the Associate Administrator for Space Operations prior to dedicating Office of Space Operations resources for support of a cooperative mission.

[56 FR 28048, June 19, 1991]

### § 1215.102 Definitions.

(a) *User.* Any non-U.S. Government representative or entity who contracts with NASA to use TDRSS services.

(b) *TDRSS.* The Tracking and Data Relay Satellite System including Tracking and Data Relay Satellites (TDRS), the White Sands Ground Terminal (WSGT), and the necessary TDRSS operational areas, interface devices and NASA communication circuits to unify the above into a functioning system. It specifically excludes the user ground system/TDRSS interface.

(c) *Bit stream.* The digital electronic signals acquired by TDRSS from the user craft or the user generated input commands for transmission to the user craft.

(d) *Flexible support.* Support requests which permit NASA, at its option, to schedule service at any time during the

period of a single orbit of the user mission. Missions requiring multiple support periods during a single orbit may be classified as constrained support.

(e) *Constrained support.* Support requests which specify the exact times NASA is to provide service, or conditions of support which can be translated into exact times for service, such as sub-satellite positions, apogee/perigee position, etc., for which support is needed.

(f) *Scheduling service period.* One scheduled contact utilizing a single TDRS whereby the user by requesting service is allotted a block of time for operations between the user satellite and TDRSS.

### §1215.103 Services.

(a) *Standard services.* These are services which the TDRSS is capable of providing to low-earth orbital user spacecraft or other terrestrial users.

(1) Tracking services.

(2) Data acquisition service.

(3) Command transmission service.

(4) Emergency line outage recording in the event of a communications failure between White Sands, Goddard Space Flight Center (GSFC), and Johnson Space Center (JSC).

(5) A weekly user spacecraft orbit determination in NASA standard orbital elements as determined by NASA for TDRSS target acquisition purposes.

(6) Delivery of user data at the NASA Ground Terminal (NGT) located at White Sands.

(7) Pre-launch support for data flow test and related activities which require use of a TDRS.

(8) Pre-launch support planning and documentation.

(9) Scheduling user services via TDRSS.

(10) Access to tracking data to enable users to perform orbit determination at their option.

(b) *Mission unique services.* Other tracking and data services desired by the user beyond the standard service and the charges therefor, will be identified and assessed on a case-by-case basis.

### §1215.104 Apportionment and assignment of services.

No user may apportion, assign, or otherwise convey to any third party its TDRSS service. Each user may obtain service only through contractual agreement with the Associate Administrator for Space Operations.

[56 FR 28048, June 19, 1991]

### §1215.105 Delivery of user data.

(a) As a standard service, NASA will provide to the user its data from the TDRSS as determined by NASA in the form of one or more digital or analog bit streams synchronized to associated clock streams at the NGT.

(b) User data handling requirements beyond the NGT interface will be provided as a standard service to the user, to the extent that the requirements do not exceed NASA's planned standard communications system. Any additional data transport or handling requirements exceeding NASA's capability will be dealt with as a mission-unique service.

(c) No storage of the user data is provided in the standard service. NASA will provide short-term temporary recording of data at White Sands, only in event of a NASA Communications Network (NASCOM) link outage.

(d) NASA will provide TDRSS services on a ''reasonable efforts'' basis and, accordingly, will not be liable for damages of any kind to the user or third parties for any reason, including but not limited to failure to provide contracted-for services. The price for TDRSS services does not include a contingency or premium for any potential damages. The user will assume any risk of damages or obtain insurance to protect against any risk.

[48 FR 9845, Mar. 9, 1983, as amended at 56 FR 28049, June 19, 1991]

### §1215.106 User command and tracking data.

(a) User command data may enter the TDRSS via the NASCOM interface at one of three locations:

(1) For Shuttle payloads which utilize the Shuttle commanding system, command data must enter the system via the Johnson Space Center (JSC)

and is governed by the policies established for STS services (see § 1215.101).

(2) For free flyers and other payloads, command data must enter the system at the Goddard Space Flight Center (GSFC) if it is to be a standard service.

(3) The use of other command data entry points [e.g., the NASA Ground Terminal (NGT) at White Sands, NM, or Johnson Space Center (JSC), for payloads using an independent direct link from TDRS to the user payload] is considered to be a mission unique service.

(b) NASA is required to maintain the user satellite orbital elements to sufficient accuracy to permit the TDRS system to establish and maintain acquisition. This can be accomplished in two ways:

(1) The user can provide the orbital elements in a NASA format to GSFC to meet TDRSS operational requirements.

(2) The user shall insure that a sufficient quantity of tracking data is received at GSFC to permit the determination of the user satellite orbital elements. The charges for this service will be determined by using the on-orbit service rates.

### § 1215.107 User data security and frequency authorizations.

(a) User data security is not provided by the TDRSS. Responsibility for data security resides solely with the user. Users desiring data safeguards shall provide and operate, external to the TDRSS, the necessary equipment or systems to accomplish data security. Any such user provisions must be compatible with data flow through TDRSS and not interfere with other users.

(b) All radio frequency authorizations associated with operations pursuant to this directive are the responsibility of the user. If appropriate, authority(ies) must be obtained from the Federal Communications Commission (FCC) for operations consistent with U.S. footnote 303 of the National Table of Frequency Allocations, FCC Rules and Regulations, at 47 CFR 2.106.

[56 FR 28049, June 19, 1991]

### § 1215.108 Defining user service requirements.

Potential users should become familiar with TDRSS capabilities and constraints, which are detailed in the TDRSS User's Guide (GSFC document, STDN No. 101.2), as early as possible. This action allows the user to evaluate the trade-offs available among various TDRSS services, spacecraft design, operations planning, and other significant mission parameters. When these user evaluations have been completed, and the user desires to use TDRSS, the user should initiate a request for TDRSS service.

(a) Initial requests for TDRSS service from non-U.S. Government users should be addressed to NASA Headquarters, Code OX, Space Network Division, Washington, DC 20546. Upon review and preliminary acceptance of the service requirements by NASA Headquarters, the appropriate areas of GSFC will be assigned to the project to produce the detailed requirements, plans and documentation necessary for support of the mission. Changes to user requirements shall be made as far in advance as possible and shall be submitted in writing to both NASA Headquarters, Code OX, Space Network Division, and GSFC, Code 501, Greenbelt, MD 20771.

(b) Acceptance of user requests for TDRSS service is the sole prerogative of NASA. Although TDRSS represents a significant increase to current support capabilities, service capacity is finite, and service will be provided in accordance with operational priorities established by NASA. Request for services within priority groups shall be negotiated with non-NASA users on a first come, first service basis for inclusion into the TDRSS mission model.

[48 FR 9845, Mar. 9, 1983, as amended at 56 FR 28049, June 19, 1991]

### § 1215.109 Scheduling user service.

(a) User service shall be scheduled only by NASA. Scheduling refers to that activity occurring after the user has been accepted and placed in the TDRSS mission model as specified in § 1215.108(b). See appendix C for a description of a typical user activity timeline.

(b) Schedule conflict will be resolved in general by application of principles of priority to user service requirements. Services shall be provided either as normally scheduled service or

as emergency/disruptive update service. Priorities will be different for emergency/disruptive updates than for normal services.

(1) Normally scheduled service is service which is planned and ordered under normal operational conditions and is subject to schedule conflict resolution under normal service priorities. Priorities are established by the NASA Administrator or his/her designee. Requests for normally scheduled service must be received by the schedulers at the GSFC Network Control Center (NCC) no later than 45 minutes prior to requested support time.

(2) Normal scheduling principles of priority are generally ordered as follows beginning with the highest priority:

(i) Launch, reentry, landing of the STS Shuttle, or other NASA launches.

(ii) NASA payloads/spacecraft.

(iii) Other payloads/spacecraft of interest to the United States.

(iv) Other payloads/spacecraft launched by a NASA launch vehicle.

(v) Other payloads/spacecraft.

(vi) Support of other launches.

(3) Exceptions to these priorities may be determined on a case-by-case basis with the NASA Administrator or his/her designee as the priorities stated in paragraph (b)(2) of this section are indicative of general rather than specific cases.

(4) Emergency service conditions are those requiring rapid response to changing user service requirements. Emergency service may be instituted under the following conditions:

(i) Circumstances which pose a threat to the security of the United States.

(ii) Circumstances which threaten human life.

(iii) Circumstances which threaten user mission loss.

(iv) Other circumstances of such a nature which make it necessary to preempt normally scheduled services.

(5) At times, emergency service requirements will override normal schedule priority. Under emergency service conditions, disruptions to schedule service will occur. As a consequence, users requiring emergency service shall be charged for emergency service at rate factors set forth in appendix B.

(6) Disruptive updates are scheduled updates which, by virtue of priorities, cause previously scheduled user services to be rescheduled or deleted or are requested by the user less than 45 minutes prior to the scheduled support period.

(i) Disruptive updates will be charged at the same rates as emergency service. User initiated schedule requests which are received less than 45 minutes prior to the requested schedule support time will be considered a disruptive update.

(ii) User initiated schedule requests which are received more than 45 minutes and less than 12 hours prior to the scheduled support period will be acted upon as a routine input provided other users are unaffected. If other users are affected, the scheduling input will be considered a disruptive update and the appropriate charge factor will be applied.

(iii) The Network Control Center (NCC) at GSFC reserves the sole right to schedule, reschedule or cancel TDRSS service. Schedule changes brought about through no fault of the user are not charged the factor for a disruptive update.

(7) While the priority listing remains the general guide for establishing support availability, the NASA schedulers will exercise judgment and endeavor to see that lower priority users are not excluded from a substantial portion of their contracted-for service due to the requirements of higher priority users.

(8) When a user contracts for TDRSS service for an ''operational satellite'' which interfaces with a significant number of national and world-wide users on a regularly scheduled basis as opposed to a ''research and development satellite,'' NASA will place special emphasis on the operational requirement when planning schedules. This should reduce the probability of losing perishable operational data such as meteorological, climate, or earth resources information.

(c) General user service requirements, which will be used for preliminary planning and mission modeling, should include as a minimum, the following;

(1) Date of service initiation.

(2) Expected date of service termination.

(3) The type of TDRSS services desired [e.g., multiple access, tracking, etc.].

(4) The frequency and duration of each service, including orbital position or time constraints on service delivery from a given spacecraft where appropriate.

(5) Orbital or trajectory parameters and tracking data requirements.

(6) Spacecraft events affecting tracking, telemetry or command requirements.

(7) Signal parameters and data rates by type of service, type and location of antennas and other related information dealing with user tracking, command, and data systems.

(8) Special test requirements, compatibility testing, data flows, simulations, etc.

(9) Identification of type and quantity of user information necessary for control functions, location of user control facility, and identification of communications requirements.

(10) Identification of ground communications requirements and interface points, including the level of support to be requested from NASCOM.

(d) To provide for effective planning, general service requirements should be provided at least 3 years before initiation of service. With these data NASA will determine whether the requested services can be provided.

(e) Detailed requirements for user services must be provided 18 months before the initiation of service. These data will be the basis for the technical definition of the Interface Control Document (ICD). If requirements are received late, necessitating extraordinary NASA activities [e.g., overtime, special printing of documents], such activities will be considered to be mission unique and their cost charged the user.

[48 FR 9845, Mar. 9, 1983, as amended at 56 FR 28049, June 19, 1991]

### § 1215.110 User cancellation of all services.

The user has the right to terminate its service contract with NASA at any time. A user who exercises this right after contracting for service shall pay the charge agreed upon for services previously rendered, and the cost incurred by the Government for support of pre-launch activities, services, and mission documentation not included in that charge. The user will remain responsible for the charges for any services actually provided.

### § 1215.111 User postponement of service.

The user may postpone the initiation of contracted service (e.g., user launch date) by delivery of written notification to NASA Headquarters, Code OX. Any delay in the contracted start of service date may affect the quantity of service to be provided due to commitments to other support requirements. Therefore, the validity of previous estimates of predicted support availability may no longer be applicable.

[56 FR 28049, June 19, 1991]

### § 1215.112 User/NASA contractual arrangement.

(a) The NASA Administrator reserves the right to waive any portion of the reimbursement due to NASA under the provisions of the reimbursement policy.

(b) When NASA has determined that a potential user has not made sufficient progress toward concluding a contractual arrangement for service, after being placed in a mission model, NASA shall have the unilateral right to remove that user from the mission model.

(c) NASA shall have the right to determine unilaterally that the potential user has failed to make progress toward concluding a contractual arrangement.

### § 1215.113 User charges.

(a) The user shall reimburse NASA the sum of the charges for standard and mission-unique services. Charges will be based on the service rates applicable for the calendar year.

(b) For standard services the user shall be charged only for services rendered, except that if a total cancellation of service occurs, the users shall be charged in accordance with the provisions of § 1215.110.

(1) Standard services which are scheduled, and then cancelled by the

user less than 12 hours prior to the start of that scheduled service period, will be charged as if the scheduled service actually occurred.

(2) The time scheduled by the user project shall include the slew time, set up and/or configuration time, TDRSS contact time, and all other conditions for which TDRSS services were allocated to the user.

(3) Charges will be accumulated by the minute, based on the computerized schedule/configuration messages which physically set up the TDRSS equipment at the start of a support period and free the equipment for other users at the end of a support period.

(c) The user shall reimburse NASA for the costs of any mission unique services provided by NASA.

(d) Any person or entity which pays to NASA the initial administrative charge (see §1215.115) does so with the understanding that it is not refundable whether or not an agreement is entered into with NASA for TDRSS services.

[48 FR 9845, Mar. 9, 1983, as amended at 56 FR 28049, June 19, 1991]

### §1215.114 Service rates.

(a) Non-U.S. Government user rates will reflect TDRSS total operational and maintenance costs prorated to a per-minute basis.

(b) Rates for TDRSS services will be set by the Associate Administrator for Space Operations each October for the following year, January through December. Rate variations will reflect changes in operating costs, loading formulas and escalation.

(c) Projected estimates will include escalation bases on the Bureau of Labor Statistics Index for compensation per hour—total private.

(d) Appendix A is provided for preliminary planning purposes only. It delineates the rate per minute by service and type of user. These rates are subject to change.

(e) The per minute charge for TDRSS service is computed by multiplying the charge per minute for the appropriate service by the number of minutes scheduled and the appropriate factor (for flexible, constrained or disruptive/emergency service).

[48 FR 9845, Mar. 9, 1983, as amended at 49 FR 10659, Mar. 22, 1984; 56 FR 28049, June 19, 1991]

### §1215.115 Payment and billing.

(a) To each user there will be an initial non-refundable administrative charge of $25,000 which is applicable toward TDRSS operational services.

(b) The procedure for billing and payment of standard TDRSS services is as follows:

(1) The calendar year is divided into two service periods, January through June and July through December. The charge for TDRSS service will be determined in October for the succeeding calendar year.

(2) The estimated cost of service, January through June period, will be due the previous July 1, and will be billed 60 days prior to the payment due date.

(3) The estimated cost of service, July through December period, will be due the previous January 1, and will be billed 60 days prior to the payment due date.

(4) Adjustments to the amounts prepaid will be made to the succeeding billings as the actual service time is tabulated. Amounts due to the user will be credited to the next service period or refunded to the user if no more service is to be provided.

(5) The total estimated cost of all standard pre-launch services such as mission planning, documentation, link analysis, testing, computer, human resources, etc., with the exception of TDRSS operational services, will be paid to the Government prior to NASA rendering such services. This advance payment will be applied as a credit to the charges billed for post-launch TDRSS operational services as specified in paragraphs (b) (1) through (4) of this section.

(c) Payment schedules for mission unique services will be mutually developed between NASA the user on a case-by-case basis, dependent upon level of engineering effort, long-lead items, special communication services or other considerations. Payment will generally be made prior to NASA incurring a cost for mission unique service.

(d) Late payments by the user will require the user to pay a late payment charge equal to 1½% per month of the unpaid balance calculated daily from the date the payment was due until the date payment is made.

## APPENDIX A TO PART 1215—ESTIMATED SERVICE RATES IN 1997 DOLLARS FOR TDRSS STANDARD SERVICES (BASED ON NASA ESCALATION ESTIMATE)

TDRSS user service rates for services rendered in CY–97 based on current projections in 1997 dollars are as follows:

1. *Single Access Service*—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $184.00 per minute for non-U.S. Government users.

2. *Multiple Access Forward Service*—Base rate is $42.00 per minute for non-U.S. Government users.

3. *Multiple Access Return Service*—Base rate is $13.00 per minute for non-U.S. Government users.

Due to the advent of commercial launch service customers, an addendum will be required to reflect rates for service rendered under the Commercial Space Launch Act (CSLA). Due to statutory requirements, the rates are slightly different for CSLA customers.

CSLA customer rates:

1. *Single Access Service*—Base rate is $180 per minute for CSLA users.

2. *Multiple Access Forward Service*—Base rate is $39 per minute for CSLA users.

3. *Multiple Access Return Service*—Base rate is $13 per minute for CSLA users.

[61 FR 46713, Sept. 5, 1996]

## APPENDIX B TO PART 1215—FACTORS AFFECTING STANDARD CHARGES

Charges for services shall be determined by multiplying the factors below by the base rates for standard services set forth in appendix A.

| | Flexible | Time or position constrained | Emergency service, disruptive updates |
|---|---|---|---|
| Single access service | .5 | 1 | 2 |
| Multiple access forward (command) service | .67 | 1 | 2 |

| | Normally scheduled support | Emergency service, disruptive updates |
|---|---|---|
| Multiple access return (telemetry) service | 1 | 2 |

## APPENDIX C TO PART 1215—TYPICAL USER ACTIVITY TIMELINE

| Time (approximate) | Activity |
|---|---|
| Project conceptualization (At least 3 years before launch; Ref. §1215.108(a)). | Request NASA Headquarters perform study to determine availability of TDRSS. If accepted as a user, begin contractual negotiation by submission of $25,000 non-refundable charge, and place into mission model. |
| 3 years before launch (Ref. §1215.109(c).. | Submit general user requirements to permit preliminary planning. Begin payment for pre-mission activities (Ref. §1215.115(b)(5)). |
| 18 months before launch (earlier if interfacing is expected).. | Provide detailed requirements for technical definition and development of operational documents and ICD's. (Ref. §1215.109(e)). If appropriate, initiate action with the Federal Communications Commission for license to communicate with TDRSS at least 18 months prior to launch (Ref. §1215.107(b)). |
| 3 weeks prior to a scheduled support period (SSP). 2 weeks prior to an SSP. | Submit scheduling request to GSFC covering a weekly period. Receive schedule from GSFC based on principles of priority (Ref. §1215.109(b)(2)). Acknowledgement to GSFC required. |
| Up to 12 hours prior to an SSP.. | Can cancel an SSP without charge (Ref. §1215.113(a)(1)). |
| Up to 45 minutes prior to an SPP.. | Can schedule an SSP if a time slot is available without impacting another user. |
| Between SSP minus 45 minutes and the SSP.. | Schedule requests will be charged at the disruptive update rate (Ref. §1215.109(b)(5)). |
| Real-Time. | Emergency service requests will be responded to per the priority system (Ref. §1215.109(b)(3)) and assessed the emergency service rate. |

[56 FR 28049, June 19, 1991]

# PART 1216—ENVIRONMENTAL QUALITY

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## Subpart 1216.1—Policy on Environmental Quality and Control

AUTHORITY: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); sec. 309 the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (40 CFR part 1500–1508); and E.O. 12114, Jan. 4, 1979 (44 FR 1957).

SOURCE: 44 FR 44485, July 30, 1979, unless otherwise noted.

### §1216.100 Scope.

This subpart sets forth NASA policy on environmental quality and control and the responsibilities of NASA officials in carrying out these policies.

### §1216.101 Applicability.

This subpart is applicable to NASA Headquarters and field installations.

### §1216.102 Policy.

NASA policy is to:

(a) Use all practicable means, consistent with NASA's statutory authority, available resources, and the national policy, to protect and enhance the quality of the environment;

(b) Provide for proper attention to and ensure that environmental amenities and values are given appropriate consideration in all NASA actions, including those performed under contract, grant, lease, or permit;

(c) Recognize the worldwide and long-range character of environmental concerns and, when consistent with the foreign policy of the United States and its own responsibilities, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;

(d) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decisionmaking for actions which may have an impact on the human environment;

(e) Pursue research and development, within the scope of NASA's authority or in response to authorized agencies, for application of technologies useful in the protection and enhancement of environmental quality;

(f) Initiate and utilize ecological and other environmental information in the planning and development of resource-oriented projects; and

(g) Invite cooperation, where appropriate, from Federal, State, local, and regional authorities and the public in NASA planning and decisionmaking processes.

### §1216.103 Responsibilities of NASA officials.

(a) The Associate Administrator for Management or designee shall:

(1) Coordinate the formulation and revision of NASA policies and positions on matters pertaining to environmental protection and enhancement;

(2) Represent NASA in working with other governmental agencies and interagency organizations to formulate, revise, and achieve uniform understanding and application of governmentwide policies relating to the environment;

(3) Develop and ensure the implementation of agencywide standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(4) Develop, as an integral part of NASA's basic decision processes, procedures to ensure that environmental factors are properly considered in all proposals and decisions;

(5) Establish and maintain working relationships with the Council on Environmental Quality, Environmental Protection Agency, and other national, state, and local governmental agencies concerned with environmental matters;

(6) Acquire information for and ensure the preparation of appropriate NASA reports on environmental matters.

(b) Officials-in-Charge of Headquarters Offices and NASA Field Installation Directors are responsible for:

(1) Identifying matters under their cognizance which may affect protection and enhancement of environmental quality and for employing the proper procedures to ensure that necessary actions are taken to meet the requirements of applicable laws and regulations;

(2) Coordinating environmental quality-related activities under their cognizance with the Associate Administrator for Management; and

(3) Supporting and assisting the Associate Administrator for Management on request.

(c) Officials-in-Charge of Headquarters Offices are additionally responsible for:

(1) Giving high priority, in the pursuit of program objectives, to the identification, analysis, and proposal of research and development which, if conducted by NASA or other agencies, may contribute to the achievement of beneficial environmental objectives; and

(2) In coordination with the Associate Administrator for Management, making available to other parties, both governmental and nongovernmental, advice and information useful in protecting and enhancing the quality of the environment.

(d) NASA Field Installation Directors are additionally responsible for:

(1) Implementing the NASA policies, standards and procedures for the protection and enhancement of environmental quality and supplementing them as appropriate in local circumstances;

(2) Specifically assigning responsibilities for environmental activities under the installation's cognizance to appropriate subordinates, while providing for the coordination of all such activities; and

(3) Establishing and maintaining working relationships with national, state, regional and governmental agencies responsible for environmental regulations in localities in which the field installations conduct their activities.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9760, Mar. 25, 1988]

## Subpart 1216.2—Floodplain and Wetlands Management

AUTHORITY: E.O. 11988 and E.O. 11990, as amended; 42 U.S.C. 2473(c)(1).

SOURCE: 44 FR 1089, Jan. 4, 1979, unless otherwise noted.

### § 1216.200 Scope.

This subpart 1216.2 prescribes procedures to:

(a) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands;

(b) Avoid direct or indirect support of floodplain and wetlands development wherever there is a practicable alternative;

(c) Reduce the risk of flood loss;

(d) Minimize the impact of floods on human health, safety and welfare;

(e) Restore, preserve and protect the natural and beneficial values served by floodplains and wetlands;

(f) Develop an integrated process to involve the public in the floodplain and wetlands management decision-making process;

(g) Incorporate the Unified National Program for Flood Plain Management; and,

(h) Establish internal management controls to monitor NASA actions to assure compliance with the Orders.

### §1216.201 Applicability.

These procedures are applicable to Federal lands and facilities under the management control of NASA Headquarters and field installations regardless of location.

### §1216.202 Responsibility of NASA officials.

(a) Directors of Field Installations and, as appropriate, the Associate Administrator for Management at NASA Headquarters, are responsible for implementing the requirements and procedures prescribed in §§1216.204 and 1216.205.

(b) The Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, is responsible for overall coordination of floodplain and wetlands management activities, and for conducting periodic on-site reviews of each Installation's floodplain and wetlands management activities, and for conducting periodic on-site reviews of each Installation's floodplain and wetlands management activities to assure compliance with the Executive orders.

[53 FR 9760, Mar. 25, 1988, as amended at 56 FR 50506, Oct. 7, 1991]

### §1216.203 Definition of key terms.

(a) *Action*— any NASA activity including, but not limited to, acquisition, construction, modification, changes in land use, issuance of facilities use permits, and disposition of Federal lands and facilities.

(b) *Base flood*— is that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

(c) *Base floodplain*— the 100-year floodplain (one percent chance floodplain). Also see definition of floodplain.

(d) *Critical action*— any activity for which even a slight chance of flooding would be too great, such as storing lunar samples or highly toxic or water reactive materials.

(e) *Facility*— any item made or placed by a person including buildings, structures and utility items, marine structures, bridges and other land development items, such as levees and drainage canals.

(f) *Flood or flooding*— a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(g) *Flood fringe*— that portion of the floodplain outside of the regulatory floodway (often referred to as ''floodway fringe'').

(h) *Floodplain*— the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain). A large portion of NASA coastal floodplains also encompasses wetlands.

(i) *Floodproofing*— the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce the effects of water entry.

(j) *Minimize*— to reduce to the smallest possible amount or degree.

(k) *One percent chance flood*— the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year, e.g., there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.

(l) *Practicable*— capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.

(m) *Preserve*— to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

(n) *Regulatory floodway*— the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner; i.e., unconfined or unobstructed either horizontally or vertically to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program (NFIP)).

(o) *Restore*— to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(p) *Wetlands*— those areas that are frequently inundated by surface or ground water and normally support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, river overflows, mud flats, wet meadows, and natural ponds. Because all NASA wetlands lie in floodplains, and for purposes of simplifying the procedures of this subpart, floodplains will be understood as to encompass wetlands, except in cases where wetlands factors require special consideration. (Also, see definition of floodplain.)

(q) *Support*— actions which encourage or otherwise provide incentives to undertake floodplain or wetlands development, such as extending roads or utilities into or near a floodplain, therefore making floodplain development more feasible.

### § 1216.204 General implementation requirements.

(a) Each NASA Field Installation shall prepare, if not already available, an Installation base floodplain map based on the latest information and advice of the appropriate District Engineer, Corps of Engineers, or, as appropriate, the Director of the Federal Emergency Management Agency. The map shall delineate the limits of both the 100-year and 500-year floodplains. A copy of the map, approved by the Field Installation Director, will be provided to the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, by February 28, 1979. The map will conform to the definitions and requirements specified in the Floodplain Management Guidelines for Implementing Executive Order 11988.

(b) For any proposed action or critical action, as defined in § 1216.203(a), using the approved floodplain map, the Field Installation Director, while concurrently seeking to avoid the floodplain, shall determine if the proposed action *will* or *will not* be located in, or may indirectly impact or indirectly support development in, the base (substitute ''500-year'' for ''base'' in critical action cases) floodplain and proceed accordingly:

(1) If the action or critical action *will* be located in the base floodplain or may indirectly impact or indirectly support floodplain development, and is not excepted under § 1216.204(h), field installations will adhere to the procedures prescribed in § 1216.205.

(2) If such action or critical action *will not* be located in the base floodplain, or is the type of action that will clearly nor indirectly impact or indirectly support floodplain development, the action may be implemented without further review or coordination, provided all other applicable NASA requirements and policies have been met.

(c) Any request for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, on a case-by-case basis, if the action proposed will be located in a floodplain and whether the proposed action is in accordance with Executive Orders 11988 and 11990.

(d) Each field installation shall: Take floodplain management and wetlands protection into account when formulating its water and land use plans—and when evaluating like plans of others—as an integral part of its facilities master planning activities; Restrict the use of land and water resources appropriate to the degree of flood hazard involved; and, Incorporate recommended Federal and State actions for the continuing unified program for

planning and action at all levels of government to reduce the risk of flood losses in accordance with the Unified National Program for Flood Plain Management (U.S. Water Resources Council, 1978).

(1) Descriptive documentation supporting these planning matters shall be included in the ''land use'' section of each field installation's facilities master plan, as prescribed in NASA Management Instruction 7232.1, Master Planning of NASA Facilities. The evaluation and quantification of flood hazards should be expressed in terms of:

(i) Potential for monetary loss;

(ii) Human safety, health, and welfare;

(iii) Shifting of costs, damage or other adverse impacts to off-site properties; and,

(iv) Potential for affecting the natural and beneficial floodplain values.

(2) NASA shall provide appropriate guidance to applicants for facilities use permits and grants to enable them to similarly evaluate, in accordance with the Orders, the effects of their proposals in floodplains and wetlands. This evaluation will be a precondition of any NASA approval of such permit or grant involving floodplains or wetlands.

(e) Facilities to be located in floodplains will be constructed in accordance with the standards and criteria promulgated under the National Flood Insurance Program (NFIP). Deviations are allowed only to the extent that these standards are inappropriate for NASA operations, research and test activities. Because construction of NASA facilities will rarely be necessary in floodplains and wetlands, expertise in the latest flood proofing measures, standards and criteria will not be normally maintained within the NASA staff. To assure full compliance with the NFIP regulations, and that the Order's key requirement to minimize harm to or within the floodplain or wetlands is met, field installations will:

(1) Consult with the appropriate local office of the Corps of Engineers or Federal Emergency Management Agency and/or U.S. Fish and Wildlife Service, as applicable, on a regular basis throughout the facility design or action planning phase. Documentation of this consultation will be recorded in the Field Installation's project file.

(2) Submit evidence of the successful completion of this consultation to the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, prior to the start of project construction.

(f) If NASA property used or visited by the general public is located in an identified flood hazard area, the Installation shall provide on structures, in this area and other places where appropriate (such as where roads enter the flood hazard area), conspicuous delineation of the 100-year and 500-year flood levels, flood of record, and probable flood height in order to enhance public awareness of flood hazards. In addition, Field Installations shall review their storm control and disaster plans to assure that adequate provision is made to warn and evacuate the general public as well as employees. These plans will include the integration of adequate warning time into such plans. The results of this review shall be submitted to the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, by February 28, 1979.

(g) When property in floodplains is proposed for lease, permit, out-grant, easement, right-of-way, or disposal to non-Federal public or private parties, the field installation shall:

(1) Reference in the conveyance document (prepared by the General Services Administration in disposal actions) those uses that are restricted under identified Federal, State, and local floodplain regulations, such as State coastal management plans.

(2) Except where prohibited by law, attach other appropriate restrictions, equal to the Order's in scope and strictness, to the uses of properties by the grantee or purchaser and any successors which assure that:

(i) Harm to lives, property and floodplain values are identified; and

(ii) Such harm is minimized and floodplain values are restored and preserved.

(3) Withhold such properties from conveyance if the requirements of paragraphs (g)(1) and (2) of this section cannot be met.

(h) The NASA Administrator has determined that certain types of actions taken in coastal floodplains and wetlands typically do not possess the potential to result in long- or short-term adverse impacts associated with the occupancy or modification of floodplains, or result in direct or indirect support of floodplain development. Nevertheless, in undertaking these actions, any opportunities to minimize, restore, and preserve floodplain and wetlands values must be considered and implemented. With this understanding, for the following types of actions, Directors of Field Installations in coastal locations may determine that undertaking such actions does not warrant full application of the procedures prescribed in § 1216.205.

(1) Hazard mitigation actions taken by a field installation on an emergency basis to reduce and control hazards associated with established NASA test or operations activities in accordance with the field installation's approved Safety Plan. Any such action must be approved in writing by the Field Installation's Safety Officer, and the approval document retained in the Safety Office files.

(2) Repair, maintenance or modification to existing roadways, bridges and utility systems in coastal floodplains or wetlands which provide long-term support for major NASA operations and test facilities (usually located out of the base floodplain), provided such repair, maintenance or modification activities are of a routine or emergency nature for which the ''no action'' alternative is not practicable; and it is ostensibly evident that:

(i) The proposed action would not impact the floodplain or wetlands.

(ii) The only alternative would be to construct new duplicate facilities near the same site with attendant impacts on the floodplain or wetlands area.

(3) Rehabilitation and modification of existing minor technical facilities (such as camera pads, weather towers, repeater buildings), including the repair of such damaged facilities to a condition closely matching the original construction, provided it can be readily determined by Directors of Field Installations that there is no practicable alternative but to continue the activity in its current coastal floodplain site. In such cases, the sitings of such facilities must be rigidly constrained by nationally recognized master planning criteria, such as ''line-of-sight, quantity-distance, and acoustic sound-pressure-level'' factors. In addition, certification of these determinations by Directors of Field Installations will be retained in the project file.

[44 FR 1089, Jan. 4, 1979, as amended at 56 FR 50506, Oct. 7, 1991]

### § 1216.205 Procedures for evaluating NASA actions impacting floodplains and wetlands.

(a) Before taking any action a determination shall first be made whether the proposed action will occur in or may adversely affect a floodplain or wetlands, using the method prescribed in § 1216.204(b).

(b) These procedures apply only to evaluations of those proposed actions which are to be located in or may adversely impact floodplains. These evaluations shall be made at the earliest practicable stage of advance planning, such as during facilities master plan development or when preparing preliminary engineering reports. These evaluations shall include analyses of harm to lives and property, the natural and beneficial values of floodplains and wetlands, and the cumulative impacts of multiple actions over the long term.

(1) Early public notice is the next step in the evaluation process and will normally be accomplished using only the appropriate Single State Point of Contact and coordinating with that party pursuant to Executive Order (E.O.) 12372, as amended, ''Intergovernmental Review of Federal Programs,'' as appropriate. If, however, actions involving land acquisition or a major change in land or water use is proposed, the overall public audience will be as broad as reasonably possible including, but not limited to, adjacent property owners and residents, near-by floodplain residents and local elected officials. To assure their continuous interaction and involvement, the Field Installation will issue public notices and newsletters, and hold public hearing and/or work shops on a formalized

scheduled basis to provide the opportunity for public input and understanding of the proposed action. Regardless of the scope of action proposed, initially a notice will be provided to the appropriate State Single Point of Contact pursuant to E.O. 12372 that will not exceed three pages and will include:

(i) A location map of the proposed action.

(ii) The reasons why the action is proposed to be located in a floodplain.

(iii) A statement indicating whether the action conforms to applicable state and local floodplain protection standards.

(iv) A list of any NASA identified alternatives to be considered.

(v) A statement explaining the timing of public notice review actions to provide opportunities for the public to provide meaningful input.

(2) Working with the appropriate State Single Point of Contact pursuant to E.O. 12372 and, if applicable, other public groups and officials, to identify practicable alternatives in addition to those already identified by NASA. The alternatives will include:

(i) Carrying out the proposed action at a location outside the base floodplain (alternative sites).

(ii) Other means which accomplish the same purpose as the proposed action (alternative actions).

(iii) Taking no action, if the resulting hazards and/or harm to or within the floodplain overbalances the benefits to be provided by the proposed action.

(3) The costs and impacts of all practicable alternatives must now be fully determined to properly assess the practicability of avoiding the base floodplain, or of minimizing harm to the floodplain if alternatives directly or indirectly support floodplain development or have other adverse impacts.

(i) The basic criteria to be used in determining the impacts of the various alternatives appear in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030). These criteria discuss in detail the three basic types of impacts which are to be addressed:

(A) Positive and negative impacts (beneficial and harmful);

(B) Concentrated and dispersed impacts (impacts on-site, near-site, and remote from the installation); and

(C) Short and long-term impacts (include temporary changes and those that take the form of delayed changes resulting from the cumulative effects of many individual actions).

(ii) Also to be determined is the nature of resulting hazards and risk to lives and property; and the restoration and preservation of natural and beneficial floodplain and wetlands values.

(iii) In determining the type, magnitude, costs, timing factors, etc., of the impacts, it is emphasized that subjective assessments have little value. To qualify for inclusion in the evaluation process, an impact must be fully described and quantified in a measurable way compatible with good scientific or engineering practice. Briefly stated, an impact is effected by or based on, and limited to, a quantified alteration of existing coastal or riverine systems including:

(A) Anticipated flood levels, sheet flow, coursing and velocity of flood caused surface water;

(B) Ground water flows and recharge;

(C) Tidal flows;

(D) Topography; and,

(E) Ecology, including water quality, vegetation and the terrestrial and aquatic habitats.

(4) For the proposed action and those alternatives which will impact the floodplain or wetlands, additional analysis must be undertaken to minimize, restore and preserve the natural and beneficial floodplain or wetlands values. Because NASA does not retain expertise in these areas of floodplain management, field installations will consult, on a case-by-case basis, with the appropriate local office of the U.S. Fish and Wildlife Service to assure that, for each of the above alternatives, methods are prescribed which will:

(i) Minimize harm to lives and property from flood hazards;

(ii) Minimize harm to natural and beneficial values of floodplains and wetlands; and

(iii) Restore floodplains or wetlands values, if applicable, to the proposed action.

(5) The proposed action and alternatives shall now be comparatively evaluated taking into account the identified impacts, the steps necessary to minimize these impacts and opportunities to restore and preserve floodplain and wetlands values. The comparison will emphasize floodplain values.

(i) If this evaluation indicates that the proposed action in the base floodplain is still practicable, consider limiting the action so that a non-floodplain site could be more practicable.

(ii) If the proposed action is outside the floodplain but has adverse impacts or supports floodplain development, consider modifying or relocating the action to eliminate or reduce these effects or even taking no action.

(6) If, upon completing the comparative evaluation, the Field Installation Director determines that the only practicable alternative is locating in the base floodplain, a statement of fundings and public explanation must be provided to all those who have received the early public notice, and specifically to the appropriate State Single Point of Contact pursuant to E.O. 12372, and will include as a minimum:

(i) The reasons why the proposed action must be located in the floodplain.

(ii) A statement of all significant facts considered in making the determination including alternative sites and actions.

(iii) A statement indicating whether the actions conform to applicable State and local floodplain protection standards.

(iv) In cases where land acquisition or major changes in land use are involved, it may also be appropriate to include:

(A) A provision for publication in the FEDERAL REGISTER or other appropriate vehicle.

(B) A description of how the activity will be designed or modified to minimize harm to or within the floodplain.

(C) A statement indicating how the action affects natural or beneficial floodplain or wetlands values.

(D) A statement listing other involved agencies and individuals.

(7) After a reasonable period (15 to 30 days) to allow for public response, the proposed action may proceed through the normal NASA approval process, or if disposal is anticipated, the action can be implemented in accordance with Federal Property Management Regulations real property disposal procedures. If, however, significant new information is revealed in comments by the public, the field installation shall reevaluate the proposed action in accordance with the provisions of paragraph (b)(5) of this section.

(8) For major NASA actions significantly affecting the quality of the human environment, the evaluations required above will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act.

(9) In accordance with § 1216.202(b), the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, will conduct periodic on-site reviews to assure that the action is carried out in accordance with the stated findings and plans for the proposed action, in compliance with the Executive orders.

[44 FR 1089, Jan. 4, 1979, as amended at 56 FR 50506, Oct. 7, 1991]

## Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

AUTHORITY: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); sec. 309 the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (40 CFR part 1500–1508); and E.O. 12114, Jan. 4, 1979 (44 FR 1957).

SOURCE: 44 FR 44485, July 30, 1979, unless otherwise noted.

### § 1216.300 Scope.

This subpart sets forth NASA procedures implementing the provisions of section 102(2) of the National Environmental Policy Act (NEPA). The NASA procedures of this subpart supplement the regulations of the Council on Environmental Quality (43 FR 55978) which

establish uniform procedures for implementing those provisions of NEPA.

**§1216.301 Applicability.**

(a) This subpart is applicable to NASA Headquarters and field installations.

(b) The procedures established by this subpart apply to all NASA actions which may have an impact on the quality of the environment. These actions may fall within any of the four NASA budget categories: Research and Development (R&D), Construction of Facilities (CoF), Research and Program Management (R&PM), and Space Flight Control and Data Communications (SFCDC), or, if not involving budget authority or other congressional approval, may be separate from the categories.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9760, Mar. 25, 1988]

**§1216.302 Definition of key terms.**

The definitions contained within part 1508, *Terminology and Index,* CEQ Regulations, 43 FR 55978, apply to subpart 1216.3. Additional definitions, necessary for the purpose of this subpart, are as follows:

(a) *Budget line items.* The individual items in the annual NASA authorization legislation which are used here to classify the range of NASA actions. The four main budget line items are:

(1) *Research and Development (R&D).* Those activities directed towards attaining the objectives of a specific mission, project, or program. All NASA's aeronautics and space program elements are categorized within the R&D program categories. R&D funds are expended chiefly for contracted research and development and for research grants. Some R&D funds are also expended in support of in-house research (e.g., equipment purchases and other research support, but *not* civil service salaries).

(2) *Research and Program Management (R&PM).* Those activities directed towards the general support of the NASA institution charged with the conduct of the aeronautics and space program. R&PM funds are expended for the NASA civil service work force (both for performing in-house R&D and for planning, managing, and supporting contractor and grantee R&D), and for other general supporting functions.

(3) *Construction of Facilities (C of F).* Those activities directed towards construction of new facilities; repair, rehabilitation, and modification of existing facilities; acquisition of related facility equipment; design of facilities projects; and advance planning related to future facilities needs.

(4) *Space Flight, Control and Data Communications (SFCDC).* Has similar scope to R&D but covers activities which are primarily of a production and operational nature related to space flight. The content includes the national fleet of Space Shuttle orbiters, including main engines, launch site and mission operations, initial spares, production tooling and supporting activities, launch operations and tracking and data acquisition.

(b) *Construction of facilities project.* The consolidation of applicable specific individual types of facility work, including related collateral equipment, which is required to fully reflect all of the needs, generally relating to one facility, which have been or may be generated by the same set of events or circumstances which are required to be accomplished at one time in order to provide for the planned initial operational use of the facility or a discrete portion thereof. Facility projects are subject to the NASA decision processes of §1216.304.

(c) *Environmental analysis.* The analysis of the environmental effects of proposed actions, including alternative proposals. The analyses are carried out from the very earliest of planning studies for the action in question, and are the materials from which the more formal environmental assessments, environmental impact statements, and public record of decisions are made.

(d) *Institutional action.* An action to establish, change, or terminate an aspect of the NASA institution, defined as the total NASA resource (plant, employees, skills).

(e) *R&D project.* A discrete research and development activity, with a scheduled beginning and ending, which normally involves one of the following primary purposes:

(1) The design, development, and demonstration of major advanced technology hardware items;

(2) The design, construction, and operation of a new launch vehicle (and associated ground support) during its research and development phase; and

(3) The construction and operation of one or more aeronautics or space vehicles (and necessary ground support) in order to accomplish a scientific or technical objective. R&D projects are each subelements in the NASA R&D budget line item. R&D projects are subject to the decision processes of § 1216.304.

(f) *SFCDC project*. R&D type projects authorized under the SFCDC budget line item.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

### § 1216.303 Responsibilities of NASA officials.

(a) The Associate Administrator for Management or designee, who is responsible for developing the procedures of this subpart and for ensuring that environmental factors are properly considered in all NASA planning and decisionmaking, shall:

(1) Monitor these processes to ensure that the agency procedures are achieving their purposes;

(2) Advise line management and inform NASA employees of technical and management requirements of environmental analysis, of appropriate expertise available in and out of NASA, and—with the assistance of the NASA General Counsel—of relevant legal developments; and

(3) Consolidate and transmit to the appropriate parties NASA comments on environmental impact statements and other environmental reports prepared by other agencies.

(b) Officials-in-Charge of Headquarters Offices (hereafter termed ''Headquarters officials'') are responsible for implementing the procedures established by these regulations for the consideration and documentation of the environmental aspects of the decision processes in their respective areas of responsibility.

(c) The Assistant Administrator for Legislative Affairs is responsible for ensuring that the legislative environmental impact statements accompany NASA recommendations or reports on proposals for legislation submitted to Congress. The Associate Administrator for Management, the Chief Financial Officer (CFO)/Comptroller and the General Counsel will provide guidance as required.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988; 56 FR 50507, Oct. 7, 1991]

## AGENCY PROCEDURES

### § 1216.304 Major decision points.

The possible environmental effects of a proposed action must be considered, along with technical, economic, and other factors, in the earliest planning. At that stage, the responsible Headquarters official shall begin the necessary steps to comply with all the requirements of section 102(2) of the National Environmental Policy Act of 1969. Major NASA activities, particularly R&D (or SFCDC) and facility projects, generally have four distinct phases: The conceptual study phase; the detailed planning/definition phase; the development/construction phase; and the operation phase. (Other NASA activities have fewer, less well-defined phases, but can still be characterized by phases representing general or feasibility study, detailed planning or definition, and implementation.) Environmental documentation shall be linked to major decision points as follows:

(a) Completion of an environmental assessment and the determination as to whether an environmental impact statement is required must be made prior to the decision to proceed from the conceptual study phase to the detailed planning/definition phase of the proposed action. For example, this determination must be concurrent with:

(1) Proposal of an R&D (or SFCDC) project for detailed planning and project definition;

(2) Proposal of a major Construction of Facilities project for detailed planning and project definition;

(3) Proposal of an institutional action (other than a facility project) for detailed planning and definition; and

(4) Proposal of a plan to define changes in an approved project.

(b) The final environmental impact statement (EIS) should be completed and circulated prior to the decision to proceed from the detailed planning/definition phase to the development/construction (or implementation) phase of the proposed action. For example, the EIS should be completed by, and incorporated with:

(1) Proposal of an R&D (or SFCDC) project for development/construction;

(2) Proposal of a major Construction of Facilities project for development/construction;

(3) Proposal to undertake a significant institutional action (other than a facility project); and

(4) Proposal to implement a program change.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

### §1216.305 Criteria for actions requiring environmental assessments.

(a) Whether a proposed NASA action within the meaning of the CEQ Regulations (43 FR 55978) requires the preparation of an environmental assessment, an environmental impact statement, both, or neither, will depend upon the scope of the action and the context and intensity of any environmental effects expected to result. A NASA action shall require the preparation of an environmental assessment (§§1501.3 and 1508.9 of the CEQ Regulations) provided the action is not one normally requiring an environmental impact statement (paragraph (c)) or it is not categorically excluded from the requirement for an environmental assessment and an environmental impact statement (paragraph (d)).

(b) Specific NASA actions normally requiring an environmental assessment are:

(1) Specific spacecraft development and flight projects in space science.

(2) Specific spacecraft development and flight projects in space and terrestrial applications.

(3) Specific experimental projects in aeronautics and space technology and energy technology applications.

(4) Development and operation of new space transportation systems and advanced development of new space transportation and spacecraft systems.

(5) Reimbursable launches of non-NASA spacecraft or payloads.

(6) Major Construction of Facilities projects.

(7) Actions to alter ongoing operations at a NASA installation which could lead, either directly or indirectly, to natural or physical environmental effects.

(c) NASA actions expected to have a significant effect upon the quality of the human environment shall require an environmental impact statement. For these actions an environmental assessment is not required. Criteria to be used in determining significance are given in §1508.27 of the CEQ Regulations (43 FR 55978). Specific NASA actions requiring environmental impact statements, all in the R&D budget category, are as follows:

(1) Development and operation of new launch vehicles.

(2) Development and operation of space vehicles likely to release substantial amounts of foreign materials into the earth's atmosphere, or into space.

(3) Development and operation of nuclear systems, including reactors and thermal devices used for propulsion and/or power generation. Excluded are devices with millicurie quantities or less of radioactive materials used as instrument detectors and small radioisotope heaters used for local thermal control, provided they are properly contained and shielded.

(d) NASA actions categorically excluded from the requirements to prepare either an environmental assessment or an EIS (§1508.4 of the CEQ Regulations) fit the following criteria: They are each sub-elements of an approved broadbased level-of-effort NASA science and technology program (basic research, applied research, development of technology, ongoing mission operations), facility program, or institutional program; and they are each managed relatively independently of other related sub-elements by means of separate task orders, Research and Technology Operating Plans, etc. Specific NASA actions fitting these criteria and thus categorically excluded from the requirements for environmental assessments and environmental impact statements are:

(1) R&D (or SFCDC) activities in space science (e.g., Physics and Astronomy Research and Analysis, Planetary Exploration Mission Operations and Data Analysis) other than specific spacecraft development and flight projects.

(2) R&D activities in space and terrestrial applications (e.g., Resource Observations Applied Research and Data Analysis, Technology Utilization) other than specific spacecraft development and flight projects.

(3) R&D activities in aeronautics and space technology and energy technology applications (e.g., Research and Technology Base, Systems Technology Programs) other than experimental projects.

(4) R&D (or SFCDC) activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

(5) R&D (or SFCDC) activities in space tracking and data systems.

(6) Facility planning and design (funding).

(7) Minor construction of new facilities including rehabilitation, modification, and repair.

(8) Continuing operations of a NASA installation at a level of effort, or altered operations, provided the alterations induce only social and/or economic effects but no natural or physical environmental effects.

(e) Even though an action may be categorically excluded from the need for a formal environmental assessment or environmental impact statement, it is not excluded from the requirement for an environmental analysis conducted during the earliest planning phases. If that analysis shows that the action deviates from the criteria for exclusion and it is concluded that there may be significant environmental effects, an environmental assessment must be carried out. Based upon that assessment, a determination must then be made whether or not to prepare an environmental impact statement.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

**§ 1216.306 Preparation of environmental assessments.**

(a) For each NASA action meeting the criteria of 14 CFR 1216.305(b) and for other actions as required, the responsible Headquarters official shall prepare an environmental assessment (40 CFR 1501.3 and 1508.9 of the CEQ Regulations) and, on the basis of that assessment, determine if an EIS is required; except where action meeting the criteria is strictly of a local nature under the purview of the Field Installation Director.

(b) If the determination is that no environmental impact statement is required, the Headquarters official or Field Installation Director, shall, in coordination with the Associate Administrator for Management, prepare a ''Finding of No Significant Impact.'' (See 40 CFR 1508.13 of the CEQ Regulations.) The ''Finding of No Significant Impact'' shall be made available to the affected public through direct distribution and publication in the FEDERAL REGISTER, or coordinated with the State Single Point of Contact pursuant to E.O. 12372, as amended, ''Intergovernmental Review of Federal Programs,'' as appropriate.

(c) If the determination is that an environmental impact statement is required, the Headquarters official shall proceed with the ''notice of intent to prepare an EIS'' (see 40 CFR 1508.22 of the CEQ Regulations). The Headquarters official shall transmit this notice to the Associate Administrator for Management for review and subsequent publication in the FEDERAL REGISTER (see 40 CFR 1507.3(e) of the CEQ Regulations). The Headquarters official shall then apply procedures set forth in 14 CFR 1216.307 to determine the scope of the EIS and proceed to prepare and release the environmental statement in accordance with the CEQ Regulations and the procedures of this subpart.

(d) Environmental assessments may be prepared for any actions, even those which meet the criteria for environmental impact statements (§ 1216.305(c)) or for categorical exclusion

(§1216.305(d)), if the responsible Headquarters official believes that the action may be an exception or that an assessment will assist in planning or decisionmaking.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

### §1216.307 Scoping.

The responsible Headquarters official shall conduct an early and open process for determining the scope of issues to be addressed in environmental impact statements and for identifying the significant issues related to a proposed action. The elements of the scoping process are defined in §1501.7 of the CEQ Regulations and the process must include considerations of the range of actions, alternatives, and impacts discussed in §1508.25 of the CEQ Regulations. The range of environmental categories to be considered in the scoping process shall include, but not be limited to:

(a) Air quality;

(b) Water quality;

(c) Waste generation, treatment, transportation disposal and storage;

(d) Noise, sonic boom, and vibration;

(e) Toxic substances;

(f) Biotic resources;

(g) Radioactive materials and nonionizing radiation;

(h) Endangered species;

(i) Historical, archeological, and recreational factors;

(j) Wetlands and floodplains; and

(k) Economic, population and employment factors, provided they are interrelated with natural or physical environmental factors.

### §1216.308 Preparation of draft statements.

(a) The responsible Headquarters official shall prepare the draft environmental impact statement in the manner provided in 40 CFR part 1502 of the CEQ Regulations and shall submit the draft statement and any attachments to the Associate Administrator for Management for NASA review prior to any formal review outside NASA. This submission shall be accompanied by a list of Federal, State, and local officials (40 CFR part 1503 of the CEQ Regulations) and a list of other interested parties (40 CFR 1506.6 of the CEQ Regulations) from whom comments should be requested.

(b) After the NASA review is completed, the Associate Administrator for Management shall submit the approved draft statement to the Environmental Protection Agency (EPA), Office of Federal Activities, and shall seek the views of appropriate agencies and individuals in accordance with 40 CFR part 1503 and §1506.6 of the CEQ Regulations.

(c) Comments received shall be provided to the originating official for consideration in preparing the final statement. To the extent possible, requirements for review and consultation with other agencies on environmental matters established by statutes other than NEPA, such as the review and consultation requirements of the Endangered Species Act of 1973, as amended, should be met prior to or through this review process (§1216.320).

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

### §1216.309 Public involvement.

(a) Interested persons can get information on NASA environmental impact statements and other aspects of NASA's NEPA process by contacting the Assistant Associate Administrator for Facilities Engineering, Code NX, NASA Headquarters, Washington, DC 20546, 202–453–1965. Pertinent information regarding any aspect of the NEPA process may also be mailed to the above address.

(b) Responsible Headquarters officials and NASA Field Installation Directors shall identify those persons, community organizations, and environmental interest groups who may be interested or affected by the proposed NASA action and who should be involved in the NEPA process. They shall submit a list of such persons and organizations to the Associate Administrator for Management at the same time they submit:

(1) A recommendation regarding a ''Finding of No Significant Impact,''

(2) A ''Notice of Intent to Prepare an EIS,''

(3) A recommendation for public hearings,

(4) A preliminary draft EIS,

(5) A preliminary final EIS,

(6) Other preliminary environmental documents (14 CFR 1216.321(d)).

(c) The Associate Administrator for Management may modify such lists referred to in paragraph (b) of this section as appropriate to ensure that NASA shall comply, to the fullest extent practicable, with 40 CFR 1506.6 of the CEQ Regulations and section 2–4(d) of Executive Order 12114.

(d) The decision whether to hold public hearings shall be made by the Associate Administrator for Management in consultation with the General Counsel.

[53 FR 9762, Mar. 25, 1988, as amended at 56 FR 50507, Oct. 7, 1991]

### § 1216.310 Preparation of final statements.

(a) After conclusion of the review process with other Federal, State, and local agencies and the public, the responsible Headquarters official shall consider all suggestions, revise the statement as appropriate, and forward the proposed final statement to the Associate Administrator for Management. The Associate Administrator for Management shall submit the approved final statement to the EPA Office of Federal Activities, to all parties who commented, and to other interested parties in accordance with CEQ Regulations.

(b) Each draft and final statement, the supporting documentation, and the record of decision shall be available for public review and copying at the office of the responsible Headquarters official, or at the office of a suitable designee. Copies of draft and final environment impact statements shall also be available at the NASA Information Center, 600 Independence Avenue, SW., Washington, DC 20546; at information centers at appropriate NASA field installations; and at appropriate state and local clearinghouses.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9762, Mar. 25, 1988]

### § 1216.311 Record of the decision.

At the time of the decision on the proposed action, the originating Headquarters official shall consult with the Associate Administrator for Management and prepare a concise public record of the decision. (See 40 CFR 1505.2 of the CEQ Regulations.)

[53 FR 9762, Mar. 25, 1988]

### § 1216.312 Timing.

(a) Environmental impact statements are drafted when the Headquarters official has determined that the statement shall be prepared. No decision to proceed to the development/construction (or implementation) phase of the proposed action (the major decision point of § 1216.304(b)) shall be made by NASA until the later of the following dates (§ 1506.10 of the CEQ Regulations);

(1) Ninety days after publication of an EPA notice of a NASA draft EIS.

(2) Thirty days after publication of an EPA notice of a NASA final EIS.

(b) When necessary to comply with other specific statutory requirements, NASA shall consult with and obtain from EPA time periods other than those specified by the Council for timing of agency action.

### § 1216.313 Implementing and monitoring the decision.

(a) Section 1505.3 of the CEQ Regulations provides for agency monitoring to assure that mitigation measures and other commitments associated with the decision and its implementation and described in the EIS are carried out and have the intended effects.

(b) The responsible Headquarters official shall, as necessary, conduct the required monitoring and shall provide periodic reports as required by the Associate Administrator for Management.

(c) If the monitoring activity indicates that resulting environmental effects differ from those described in the current documents, the Headquarters official shall reassess the environmental impact and consult with the Associate Administrator for Management to determine the need for additional mitigation measures and whether to prepare a supplement to the EIS (see 40 CFR 1502.9 of the CEQ Regulations).

[44 FR 44485, July 30, 1979, as amended at 53 FR 9762, Mar. 25, 1988]

**§1216.314 Tiering.**

Actions which are the subject of an environmental impact statement and which represents projects of broad scope may contain within them component actions of narrower scope, perhaps restricted to individual sites of activity or sequential stages of a mission, and which themselves may require environmental assessments and, where necessary, environmental impact statements. The CEQ Regulations provide that agencies may use ''Tiering'' (§1508.28 of the CEQ Regulations) of environmental impact statements to relate such broad and narrow actions. When employing tiering, Headquarters officials shall, by reference, make maximum use of environmental documentation already available, and avoid repetition.

**§1216.315 Processing legislative environmental impact statements.**

(a) Preparation of a legislative environmental impact statement shall conform to the requirements of 40 CFR 1506.8 of the CEQ Regulations. The responsible Headquarters official, in coordination with the Associate Administrator for Management, shall identify those NASA recommendations or reports on legislation that would require preparation of environmental impact statements in accordance with criteria set forth in 14 CFR 1216.305.

(b) For the purposes of this provision, ''legislation'' not only excludes requests for appropriations (40 CFR 1508.17 of the CEQ Regulations), but also excludes the annual authorization bill submitted to the Congress.

[53 FR 9762, Mar. 25, 1988]

**§1216.316 Cooperating with other agencies and individuals.**

(a) The Associate Administrator for Management, in coordination with the Associate Administrator for External Relations, shall ensure that NASA officials have an opportunity to cooperate with other agencies and individuals. He/she shall keep abreast of the activities of Federal, state, and local agencies, particularly activities in which NASA has expertise or jurisdiction by law (see 40 CFR 1508.15 of the CEQ Regulations). He/she shall inform the responsible Headquarters official of the need for cooperation as necessary.

(b) At the request of the Associate Administrator for Management, Headquarters officials shall initiate discussions with another Federal agency concerning those activities which may be the subject of that agency's EIS on which NASA proposes to comment.

(c) At the request of the Associate Administrator for Management, the responsible Headquarters official shall, in the interest of eliminating duplication, prepare joint analyses, assessments, and statements with state and local agencies. These joint environmental documents shall conform with the requirements of these procedures and overall NASA policy.

(d) Because of the uniqueness of the NASA's aerospace activities, it is unlikely that NASA will have the opportunity to ''adopt'' environmental statements prepared by other agencies (40 CFR 1506.3 of the CEQ Regulations). However, should the responsible NASA offical wish to adopt a Federal draft or final environmental impact statement or portion thereof, he/she shall consult with the Associate Administrator for Management to determine whether that statement meets NASA requirements.

(e) From time to time, there may be disagreements between NASA and other Federal agencies regarding which agency has primary responsibility to prepare an environmental impact statement in which both parties are involved. The Headquarters official with primary responsibility for the activity in question shall consult with the Associate Administrator for Management to resolve such questions in accordance with 40 CFR 1501.5 of the CEQ Regulations.

(f) Responsibility for the environmental analyses and any necessary environmental assessments and environmental impact statements required by permits, leases, easements, etc., proposed for issuance to non-Federal applicants rests with the Headquarters official responsible for granting of that permit, lease, easement, etc. The responsible Headquarters official shall consult with the Associate Administrator for Management for advice on the type of environmental information

needed from the applicant and on the extent of the applicant's participation in the necessary environmental studies and their documentation.

[53 FR 9762, Mar. 25, 1988]

### § 1216.317 Classified information.

Environmental assessments and impact statements which contain classified information to be withheld from public release in the interest of national security or foreign policy shall be organized so that the classified portions are appendices to the environmental document itself. The classified portion shall not be made available to the public.

### § 1216.318 Deviations.

From time to time there will arise good and valid reasons for a deviation from these procedures. These procedures are not intended to be a substitute for sound professional judgment. Accordingly, if and as problems arise which justify a deviation, the proposed deviation and supporting rationale shall be forwarded to the Associate Administrator for Management. Unless such documentation is received, it will be assumed that each planning and decisionmaking action is in accordance with these procedures.

[53 FR 9763, Mar. 25, 1988]

## OTHER REQUIREMENTS

### § 1216.319 Environmental resources document.

Each Field Installation Director shall ensure that there exists an environmental resources document which describes the current environment at that field installation, including current information on the effects of NASA operations on the local environment. This document shall include information on the same environmental effects as included in an environmental impact statement (see 14 CFR 1216.307). This document shall be coordinated with the Associate Administrator for Management and shall be published in an appropriate NASA report category for use as a reference document in preparing other environmental documents (e.g., environmental impact statements for proposed actions to be located at the NASA field installation in question). The Director of each NASA field installation shall ensure that existing resource documents are reviewed and updated, if necessary, by December 31, 1980, and at appropriate intervals thereafter.

[53 FR 9763, Mar. 25, 1988]

### § 1216.320 Environmental review and consultation requirements.

(a) Headquarters officials and Field Installation Directors shall, to the maximum extent possible, conduct environmental analyses, assessments, and any impact statement preparation concurrently with environmental reviews required by the laws and regulations listed below:

(1) Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470(f)) requires identification of National Register properties, eligible properties, or properties which may be eligible for the National Register within the area of the potential impact of a NASA proposed action. Evaluation of the impact of the NASA action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comments.

(2) Section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.) requires indentification of and consultation on aspects of the NASA action that may affect listed species or their habitat. A written request for consultation, along with the draft statement, shall be conveyed to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the Region where the action will be carried out.

(3) Executive Order 11988 (Floodplains Management) and Executive Order 11990 (Wetlands), as amended, and implemented by 14 CFR subpart 1216.2—*Floodplains and Wetlands Management*, prescribe procedures to avoid adverse impacts associated with the occupancy and modification of floodplains and wetlands and require identification and evaluation of actions which are proposed for location in or which may affect a floodplain or wetland. A comparative evaluation of such actions

shall be discussed in draft environmental impact statements and transmitted to appropriate State Single Point of Contact for comments.

(b) Other environmental review and consultation requirements peculiar to NASA, if any, may be identified in the NASA environmental impact implementation handbook.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9763, Mar. 25, 1988]

### §1216.321 Environmental effects abroad of major Federal actions.

(a) In accordance with these procedures and E.O. 12114, ''Environmental Effects Abroad of Major Federal Actions'' (44 FR 1957), dated January 4, 1979, the Headquarters official shall analyze actions under his/her cognizance with due regard for the environmental effects abroad of such actions. The Headquarters official shall consider whether such actions involve:

(1) Potential environmental effects on the global commons (i.e., oceans and the upper atmosphere);

(2) Potential environmental effects on a foreign nation not participating with or not otherwise involved in the NASA activity;

(3) The export of products or facilities producing products (or emission/effluents) which in the United States are prohibited or strictly regulated because their effects on the environment create a serious public health risk. The Associate Administrator for Management will provide additional guidance regarding the types of chemical, physical, and biological agents involved.

(4) A physical project which, in the U.S., would be prohibited or strictly regulated by Federal law to protect the environment against radioactive substances;

(5) Potential environmental effects on natural and ecological resources of global importance and which the President in the future may designate (or which the Secretary of State designates pursuant to international treaty). A list of any such designations will be available from the Associate Administrator for Management.

(b) Prior to decisions (§1216.304) on any action falling into the categories specified in paragraph (a), the Headquarters official shall make a determination whether such action may have a significant environmental effect abroad.

(c) If the Headquarters official determines that the action will not have a significant environmental effect abroad, he/she shall prepare a memorandum for the record which states the reasoning behind such a determination. A copy of the memorandum shall be forwarded to the Associate Administrator for Management. Note that these procedures do not allow for categorical exclusions (E.O. 12114, section 2–5(d)).

(d) If the Headquarters official determines that an action may have a significant environmental effect abroad, he/she shall consult with the Associate Administrator for Management and the Director, International Relations Division. The Associate Administrator for Management, in coordination with the Director, International Relations Division, shall (as specified in E.O. 12114) make a determination whether the subject action requires:

(1) An environmental impact statement,

(2) Bilateral or multilateral environmental studies, or

(3) Concise reviews of environmental issues.

(e) When informed of the determination of the Associate Administrator for Management, the Headquarters official shall proceed to take the necessary actions in accordance with these implementing procedures.

(f) The Associate Administrator for Management shall, in coordination with the Associate Administrator for External Relations, determine when an affected nation shall be informed regarding the availability of documents referred to in paragraph (d) of this section and coordinate with the Department of State all NASA communications with foreign governments concerning environmental matters as related to E.O. 12114.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9763, Mar. 25, 1988]

## PART 1217—DUTY-FREE ENTRY OF SPACE ARTICLES

Sec.

1217.100 Scope.

1217.101 Applicability.
1217.102 Background.
1217.103 Authority to certify.
1217.104 Certification forms.
1217.105 Procedures.
1217.106 Articles brought into the United States by NASA from space.

AUTHORITY: Sections 101 and 103 of Pub. L. 103–465, 108 Stat. 4814 and 4819; Proclamation No. 6780 of March 23, 1995, 60 FR 15845 (March 27, 1995).

SOURCE: 62 FR 6467, Feb. 12, 1997, unless otherwise noted.

### § 1217.100 Scope.

This part sets forth policy and procedures with respect to the use of the NASA's authority to certify to the U.S. Commissioner of Customs duty-free entry of articles into the United States for the use of NASA or for implementation of a NASA international program, including articles that will be launched into space, spare parts for such articles, ground support equipment, or uniquely associated equipment for use in connection with a NASA international program or launch service agreement. This part also sets forth NASA's procedures with respect to the use of its authority to bring foreign-owned articles and articles from space into the customs territory of the United States, and describes the non-import status of such articles.

### § 1217.101 Applicability.

This part applies to qualifying articles entered or withdrawn from warehouse for consumption in the customs territory of the United States, and to articles brought into the customs territory of the United States by NASA from space or from foreign country as part of the NASA international program.

### § 1217.102 Background.

In order to encourage and facilitate the use of NASA's launch services for the exploration and use of space, section 116 of Public Law 97–446 provided for the duty-free entry into the United States of certain articles imported by NASA for its space-related activities or articles imported by another person or entity for the purpose of meeting its obligations under a launch services agreement with NASA. Such articles were certified by NASA to the Commissioner of Customs for duty-free entry to be launched into space or space parts or necessary and uniquely associated support equipment for use in connection with a launch into space. This exemption from duty was provided for in Subheading 9808.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). Also, HTSUS, Chapter VIII, U.S. note 1, pursuant to the same law, provided that return of articles by NASA from space to the United States would not be considered an importation, and similarly not be subject to a duty.

As a result of the Uruguay Round agreements of the 1994 General Agreement on Tariffs and Trade, this authority was revised and expanded in scope. It now provides that imports of articles for NASA's use and articles imported to implement NASA's international programs, including articles to be launched into space, parts thereof, ground support equipment, and uniquely associated equipment for use in connection with NASA's international programs and launch service agreements would be eligible for duty-free customs entry upon certification by NASA to the Commissioner of Customs. The revised authorities also provided, in U.S. note 1 to subchapter VIII of chapter 98 of the HTSUS, that articles brought into the customs territory of the United States by NASA from space or from a foreign country as part of a NASA's international programs would not be considered imports or subject to customs entry requirements.

### § 1217.103 Authority to certify.

(a) The following NASA officials, their deputies, and designees within their respective organizations are authorized, under the conditions described herein, to make the certification to the Commissioner of Customs required for the duty-free entry of space articles pursuant to subheading HTSUS 9808.00.80.

(1) The NASA Associate Administrator for Procurement is authorized to issue the certification for articles imported into the United States which are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors

when title to the articles is or will be vested in the U.S. Government pursuant to the terms of the contract or subcontract. Requests for certification should be sent to: Office of Procurement, Attn: HK/Director, Contract Management Division, National Aeronautics and Space Administration, Washington, DC 20546.

(2) The NASA Associate Administrator for External Relations is authorized to issue the certification for articles imported into the United States pursuant to international agreements. Requests for certification should be sent to: Office of External Relations, Attn: ID/Manager, International Technology Transfer Policy, National Aeronautics and Space Administration, Washington, DC 20546.

(3) The NASA Associate Administrator for Space Flight is authorized to issue the certification for articles imported into the United States by persons or entities under agreements other than those identified in paragraphs (a)(1) and (a)(2) of this section, including launch services agreements. Requests for certification should be sent to: Office of Space Flight, Attn: M/Director, Space Operations Utilization, National Aeronautics and Space Administration, Washington, DC 20546.

(b) Each certification by the officials identified in paragraphs (a)(1), (a)(2), and (a)(3) of this section shall receive the concurrence of the Office of the General Counsel.

(c) Subject to procedures established by the officials identified in paragraphs (a)(1), (a)(2), or (a)(3) of this section, as appropriate, the Center Procurement Officer or a Program Manager at a NASA Installation who is designated by an official identified in paragraphs (a)(1), (a)(2), or (a)(3) of this section may make the certification to the Commissioner of Customs required for the duty-free entry of space articles pursuant to subheading HTSUS 9808.00.80. Such procedures shall include the following requirements:

(1) All such certifications by designated Procurement Officers or Program Managers shall receive the concurrence of the Chief Counsel of the issuing NASA Installation; and

(2) All such certifications by designated Procurement Officers or Program Managers shall be promptly reported to an official identified in paragraphs (a)(1), (a)(2), or (a)(3) of this section, as appropriate.

## §1217.104 Certification forms.

To the extent an authorized NASA official approves a request for certification, that official shall sign a certificate in the following form:

(a) For articles procured by NASA, a Customs Service Form CF 7501 (Entry Summary) shall be completed, and the following certification shall be used:

ARTICLES FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

*Item 9808.00.80, Harmonized Tariff Schedule of the United States*

Program: _____

I hereby certify that the articles identified in [*attached invoice*] are being imported for the use of the National Aeronautics and Space Administration (NASA) in accordance with 9808.00.80, Harmonized Tariff Schedule of the United States.

Name _____

Date _____

(b) For articles imported by NASA to implement international programs of NASA to which NASA will take title, or which remain the property of foreign entities under such programs, no entry is required pursuant to U.S. note 1 to HTSUS subchapter VIII of chapter 98. For such articles, the following certification shall be used:

ARTICLES FOR USE IN AN INTERNATIONAL PROGRAM OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

*Item 9808.00.80, Harmonized Tariff Schedule of the United States*

Program: _____

Foreign Owner(s) (if applicable): _____

In accordance with subheading 9808.00.80 and U.S. note 1 to subchapter VIII of chapter 98, Harmonized Tariff Schedule of the United States, I hereby certify that the above-described shipment is being brought into the customs territory of the United States as part of an international program of the National Aeronautics and Space Administration (NASA). No CF 7501 entry is required for this shipment. All articles contained in this shipment are, and shall remain, the property of NASA or of the foreign entities identified above. Except for articles consumed in the execution of the above-described Program, none of these articles will be made available

for sale or other disposition to persons or institutions not directly involved in the Program identified above.

Name _____

Date _____

(c) A blanket certificate for a series of imports under a specific NASA international program or procurement is authorized but shall require written verification by a NASA official designated by a Director of a receiving NASA Installation that the articles received meet the conditions of the certificate. The blanket certificate shall be in the form of the certifications set forth in paragraphs (a) or (b) of this section, as appropriate, but shall include the following paragraph at the end thereof:

Before this certification is used to obtain duty-free entry of these articles, a cognizant NASA official at the receiving NASA Installation, who is designated by the Installation Director, shall verify in writing that specifically identified articles to be entered on a particular date are the articles described in this certificate or its attachments. This verification and this certification shall be presented to the U.S. Customs Service at the time entry for the particular articles is sought.

Name _____

Date _____

With respect to articles represented to be: procurements by NASA; or imports to implement international programs of NASA to which NASA will take title, or foreign-owned articles for use in a NASA international program, the NASA official issuing the blanket certificate shall review the proposed articles and approve their eligibility for duty-free entry. A description of these articles shall either be referred to in the blanket certificate and provided in Form CF 7501 (Entry Summary) for procurements or attached to the certificate for imports to implement NASA international programs, as appropriate.

### § 1217.105 Procedures.

(a) Requests for certification shall be forwarded to an appropriate NASA official or designee as provided for in § 1217.103 of this part.

(b) Each request for certification shall be accompanied by:

(1) A proposed certificate as provided for in § 1217.104 of this part;

(2) The information and documentation required by 19 CFR 10.102(a), including invoice documentation or a description of covered articles; and

(3) The anticipated date of entry of entry and port of entry for each article. If the article is to be transported in bond from the port of arrival to another port of entry in the United States, identify both ports.

(c) The signed certificate and its attachment(s) will be forwarded to the NASA Installation responsible for duty-free entry of the materials, unless issued at such Installation by an authorized official in accordance with § 1217.103(c) of this part. These documents shall be presented to an appropriated Customs official at the port(s) of entry. The procedures specified in 19 CFR 10.102 will be followed by the NASA Installation in obtaining duty-free entry at the Customs port(s) of entry. The NASA Installation should ensure that, at the time the articles are to be released after Customs entry, the custody of the imported articles is transferred directly from the carrier or from the U.S. Customs Service to the NASA Installation, its agent, or the launch service customer in the case of a Launch and Associated Services Agreement.

(d) If articles procured under contract by NASA are imported prior to compliance with these procedures and it is essential that the articles be released from Customs custody prior to such compliance, the procedures outlined in 19 CFR 10.101 may be followed by cognizant NASA officials to secure the release of the articles from Customs custody. To the extent applicable, the procedures in § 1217.105 of this part shall be followed when time permits to obtain duty-free entry for the articles released from Customs custody.

### § 1217.106 Articles brought into the United States by NASA from space.

Pursuant to U.S. note 1 subchapter VIII of chapter 98, HTSUS, articles brought into the customs territory of the United States by NASA from space shall not be considered an importation, and no certification or entry of such materials through U.S. Customs shall

be required. This provision is applicable to articles brought to the U.S. from space whether or not the articles were launched into space aboard a NASA vehicle.

# PART 1221—THE NASA SEAL AND OTHER DEVICES, AND THE CONGRESSIONAL SPACE MEDAL OF HONOR

## Subpart 1221.1—NASA Seal, NASA Insignia, NASA Logotype, NASA Program Identifiers, NASA Flags, and the Agency's Unified Visual Communications System

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APPENDIX A TO PART 1221—CONGRESSIONAL SPACE MEDAL OF HONOR

## Subpart 1221.1—NASA Seal, NASA Insignia, NASA Logotype, NASA Program Identifiers, NASA Flags, and the Agency's Unified Visual Communications System

AUTHORITY: 42 U.S.C. 2472(a) and 2473(c)(1).

SOURCE: 58 FR 58944, Nov. 5, 1993, unless otherwise noted.

### §1221.100 Scope.

This subpart sets forth the policy governing the use of the NASA Seal, the NASA Insignia, NASA Logotype, NASA Program Identifiers, and the NASA Flags. This subpart also establishes and sets forth the concept and scope of the NASA Unified Visual Communications System and prescribes the policy and guidelines for implementation of the system.

### §1221.101 Policy.

(a) The NASA Seal, the NASA Insignia, NASA Logotype, NASA Program Identifiers, the NASA Flags, and the Agency's Unified Visual Communications System, as prescribed in §1221.102 through §1221.108 of this subpart, shall be used exclusively to represent NASA, its programs, projects, functions, activities, or elements. The use of any devices other than those provided by or subsequently approved in accordance with the provisions of this subpart is prohibited.

(b) The use of the devices prescribed in this section shall be governed by the provisions of this subpart. The use of the devices prescribed in this section for any purpose other than as authorized by this subpart is prohibited. Their misuse shall be subject to the penalties authorized by statute, as set forth in §1221.115 and shall be reported as provided in §1221.116.

(c) Any proposal for a new NASA Insignia, NASA Logotype, NASA Program Identifier, or for modification to those prescribed in this section shall be processed in accordance with §1221.114.

**§ 1221.102 Establishment of the NASA Seal.**

The NASA Seal was established by Executive Order 10849 (24 FR 9559), November 27, 1959, as amended by Executive Order 10942 (24 FR 4419), May 22, 1961. The NASA Seal, established by the President, is the Seal of the Agency and symbolizes the achievements and goals of NASA and the United States in aeronautical and space activities. The NASA Seal shall be used as set forth in § 1221.109.

FIGURE A

The NASA Seal

TECHNICAL DESCRIPTION:

The official seal of the National Aeronautics and Space Administration is a disc of blue sky strewn with white stars. To the left, there is a large yellow sphere bearing a red flight vector symbol. The wings of the vector symbol envelope and cast a brown shadow upon it. A white horizontal orbit also encircles the sphere. To the right, there is a small light blue sphere. A white band which circumscribes the disc is edged in gold and is inscribed with "National Aeronautics and Space Administration U.S.A." in red letters.

**§ 1221.103 Establishment of the NASA Insignia.**

The NASA Insignia was designed by the Army Institute of Heraldry and approved by the Commission of Fine Arts and the NASA Administrator. It symbolizes NASA's role in aeronautics and space and is established by the NASA Administrator as the signature an design element for visual communications formerly reserved for the NASA Logotype. The NASA Insignia shall be used as set forth in § 1221.110, the NASA Graphics Standards Manual, NASA Insignia Standards Supplement, and any related NASA directive or specification approved by the NASA Administrator and published subsequent hereto.

FIGURE B

The NASA Insignia

TECHNICAL DESCRIPTION:

The official insignia of the National Aeronautics and Space Administration is a dark blue disc with white stars. The white hand-cut letters "NASA" are in the center of the disc and are encircled by a white diagonal orbit. A solid red vector symbol also appears behind and in front of the letters.

REPRODUCTION:

The NASA Insignia may be reproduced black-on-white (single color) as shown above or two-color (blue and red on white). The colors are PMS 286 blue and PMS 185 red.

The Insignia may be reproduced in various sizes but not less than five-eighths (5/8) of an inch. The sizes are determined on the basis of (a) desired effect for visual identification or publicity purposes, (b) relative size of the object on which the Insignia is to appear, and (c) consideration of any design, layout, reproduction, or other problems involved. For more information, refer to the NASA Insignia Standards Supplement.

**§1221.104 Establishment of the NASA Logotype.**

The NASA Logotype was approved by the Commission of Fine Arts and the NASA Administrator. It symbolizes NASA's role in aeronautics and space from 1975 to 1992 and has been retired.

The NASA Logotype shall be used as set forth in § 1221.111.

FIGURE C

The NASA Logotype

REPRODUCTION:

Black-on- white or single color: As shown.

One color: The preferred color of the NASA Logotype is NASA red (PMS 179), used only when a second color is available and appropriate. Against a white background, the NASA Logotype may be shown in NASA red, black, or NASA warm gray (PMS 416). For background of other values, the Graphics Standards Manual is to be consulted and followed.

SIZE:

The NASA Logotype may be reproduced or used in various sizes. Size to be determined on the basis of (a) desired effect for visual identification or publicity purposes, (b) relative size of the object on which the NASA Logotype is to appear, and (c) consideration of any design, layout, reproduction or other problems involved. Refer to the Graphics Standards Manual for details.

RESTRICTION:

The NASA Logotype will not be used for any purpose without the written approval of the Administrator.

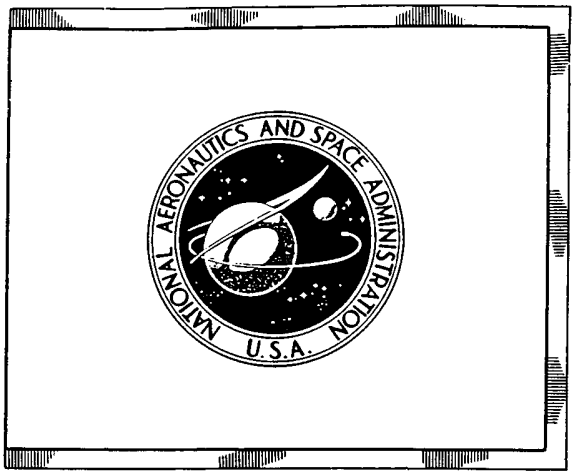
**§ 1221.105 Establishment of NASA Program Identifiers.**

A separate and unique identifier may be designed and approved in connection with or in commemoration of a major NASA program. Each approved identifier shall be officially identified by its title such as "Apollo," "Skylab," "Viking," "Space Shuttle," "Space Station," or a major NASA anniversary. NASA Program Identifiers shall be used as set forth in § 1221.112 pursuant to approval as set forth in § 1221.114.

**§ 1221.106 Establishment of the NASA Flag.**

The NASA Flags for interior and exterior use were created by the NASA Administrator in January 1960. Complete design, size, and color of the NASA interior and exterior flags for manufacturing purposes are detailed in U.S. Army QMG Drawing 5–1–269, revision September 14, 1960. The NASA Flags shall be used as set forth in § 1221.113.

FIGURE D




The NASA Flag

REFERENCE:

U.S. Army QMG Drawing 5-1-269; Revision 14 September 1960, Note: Recommend use of Military Specification (MIL F-2692D dated 14 March 1969, as amended) in conjunction with referenced drawing as a guideline for procurement purposes.

Technical Description of Interior Flag:

The color of the National Aeronautics and Space Administration flag will be of blue Bemberg taffeta-weave rayon, three (3) feet, four (4) inches on the hoist by five (5) feet, six (6) inches fly. In the center of the color will be the Official Seal of the National Aeronautics and Space Administration thirty inches in diameter. The devices and stars of the Seal will be embroidered by the Bonnaz Process. The color will be trimmed on three edges with a knotted fringe of rayon two and one half (2½) inches wide. Cord and tassels will be yellow rayon strands. See drawing referenced above for complete details.

Technical Description of Exterior Flag:

NASA flags for external use may be procured in two sizes: 5' x 9'-6" (without fringe) or 10' x 19' (without fringe). Detailed design, colors and size specifications are as set forth in the drawing referenced above.

**§1221.107 Establishment of the NASA Administrator's, Deputy Administrator's, and Associate Deputy Administrator's Flags.**

(a) Concurrently with the establishment of the NASA Flag in January 1960, the NASA Administrator also established NASA Flags to represent the NASA Administrator, Deputy Administrator, and Associate Deputy Administrator. Each of these flags conforms to the basic design of the NASA Flag except for the following:

(1) The size of the flag is 3 feet × 4 feet;

(2) The Administrator's Flag has four stars;

(3) The Deputy Administrator's Flag has three stars; and

(4) The Associate Deputy Administrator's Flag has two stars.

(b) Flags representing these senior officials shall be used as set forth in § 1221.113.

### § 1221.108 Establishment of the NASA Unified Visual Communications System.

(a) The NASA Administrator directed the establishment of a NASA Unified Visual Communications System. The system was developed under the Federal Design Improvement Program initiated by the President in May 1972. This system is the Agencywide program by which NASA projects a contemporary, business-like, progressive, and forward-looking image through the use of effective design for improved communications. The system provides a professional and cohesive NASA identity by imparting continuity of graphics design in all layout, reproduction art, stationery, forms, publications, signs, films, video productions, vehicles, aircraft, and spacecraft markings and other items. It creates a unified image which is representative and symbolic of NASA's progressive attitudes and programs.

(b) The Associate Administrator for Public Affairs is responsible for the development and implementation of the NASA Unified Visual Communications System. With the development of the NASA Unified Visual Communications System, the Office of Public Affairs at NASA Headquarters created the NASA Graphics Standards Manual and the NASA Insignia Standards Supplement which are the official guides for the use and application of the NASA Insignia and the NASA Unified Visual Communications System.

(c) The Associate Administrator for Public Affairs, NASA Headquarters, has designated a NASA Graphics Coordinator to implement and monitor Agencywide design improvements in consonance with the NASA Graphics Standards Manual, the NASA Insignia Standards Supplement, and the NASA Unified Visual Communications System. The NASA Graphics Coordinator will develop and issue changes and additions to the manual as required and as new design standards and specifications are developed and approved. Copies of the NASA Graphics Standards Manual and the NASA Insignia Standards Supplement may be obtained directly from the NASA Graphics Coordinator, Office of Public Affairs, NASA Headquarters.

(d) The Director of each Field Installation has designated an official to serve as Graphics Coordinator for his/her Installation. The Director, HQ Operations Division, has designated an official to serve as the Headquarters Graphics Coordinator. Any changes in these assignments shall be reported to the NASA Graphics Coordinator, NASA Headquarters, Code POS.

(e) Graphics Coordinators are responsible for ensuring compliance with the NASA Graphics Standards Manual, the NASA Insignia Standards Supplement, and the NASA Unified Visual Communications System for their respective Installations.

### § 1221.109 Use of the NASA Seal.

(a) The Associate Deputy Administrator shall be responsible for custody of the NASA Impression Seal and custody of NASA replica (plaques) seals. The NASA Seal is restricted to the following:

(1) NASA award certificates and medals.

(2) NASA awards for career service.

(3) Security credentials and employee identification cards.

(4) NASA Administrator's documents; the Seal may be used on documents such as interagency or intergovernmental agreements and special reports to the President and Congress, and on other documents, at the discretion of the NASA Administrator.

(5) Plaques; the design of the NASA Seal may be incorporated in plaques for display in Agency auditoriums, presentation rooms, lobbies, offices of senior officials, and on the fronts of buildings occupied by NASA. A separate NASA seal in the form of a 15-inch, round, bronze-colored plaque on a walnut-colored wood base is also available, but prohibited for use in the above representational manner. It is restricted to use only as a presentation item by the Administrator and the Deputy Administrator.

(6) The NASA Flag and the NASA Administrator's, Deputy Administrator's, and Associate Deputy Administrator's Flags, which incorporate the design of the Seal.

(7) NASA prestige publications which represent the achievements or missions of NASA as a whole.

(8) Publications (or documents) involving participation by another Government agency for which the other Government agency has authorized the use of its seal.

(b) Use of the NASA Seal for any purpose other than as prescribed in this section is prohibited, except that the Associate Deputy Administrator may authorize, on a case-by-case basis, the use of the NASA Seal for purposes other than those prescribed when the Associate Deputy Administrator deems such use to be appropriate.

**§1221.110 Use of the NASA Insignia.**

The NASA Insignia is authorized for use on the following:

(a) *NASA articles.* (1) NASA letterhead stationary.

(2) Films, videotapes, and sound recordings produced by or for NASA.

(3) Wearing apparel and personal property items used by NASA employees in the performance of their duties.

(4) Required uniforms of contractor employees when performing public affairs, guard or fire protection duties, and similar duties within NASA Installations or at other assigned NASA duty stations, and on any required contractor-owned vehicles used exclusively in the performance of these duties, when authorized by NASA contracting officers.

(5) Spacecraft, aircraft, automobiles, trucks and similar vehicles owned by, leased to, or contractor-furnished to NASA, or produced for NASA by contractors, but excluding NASA-owned vehicles used and operated by contractors for the conduct of contractor business.

(6) Equipment and facilities owned by, leased to, or contractor-furnished to NASA, such as machinery, major tools, ground handling equipment, office and shop furnishings (if appropriate), and similar items of a permanent nature, including those produced for NASA by contractors.

(7) NASA publications, including pamphlets, brochures, manuals, handbooks, house organs, bulletins, general reports, posters, signs, charts, exhibits, and items of similar nature for general use, as specified in the NASA Graphics Standards Manual and the NASA Insignia Standards Supplement.

(8) Briefcases or dispatch cases issued by NASA.

(9) Certificates covering authority to NASA and contractor security personnel to carry firearms.

(10) NASA occupied buildings when the use of the NASA Insignia is more appropriate than use of the NASA Seal.

(b) *Personal articles—NASA employees.* (1) Business calling cards of NASA employees may carry the imprint of the NASA Insignia.

(2) Limited usage on automobiles. If determined appropriate by the cognizant Installation official, it is acceptable to place a NASA Insignia sticker on personal automobiles where such identification will facilitate entry or control of such vehicles at NASA Installations or parking areas.

(3) Personal items used in connection with NASA employees' recreation association activities.

(4) Items for sale through NASA employees' nonappropriated fund activities subject to paragraph (c) of this section.

(5) NASA employees shall not use the NASA Insignia in any manner that would imply that NASA endorses a commercial product, service, or activity or that material of a nonofficial nature represents NASA's official position.

(c) *Miscellaneous articles.* (1) The manufacture and commercial sale of the NASA Insignia as a separate and distinct device in the form of an emblem, patch, insignia, badge, decal, vinylcal, cloth, metal, or other material which would preclude NASA's control over its use or application is prohibited.

(2) Use of the NASA Uniform Patches, which incorporate the NASA Insignia, is authorized only as prescribed in the NASA Graphics Standards Manual and the NASA Insignia Standards Supplement, for NASA personnel and NASA contractor personnel identification.

(3) No approval for use of the NASA Insignia will be authorized when its use can be construed as an endorsement by NASA of a product or service.

(4) Items bearing the NASA Insignia such as souvenirs, novelties, toys, models, clothing, and similar items (including items for sale through the NASA employees' nonappropriated fund activities) may be manufactured and sold only after the NASA Insignia application has been submitted to, and approved by, the Associate Administrator for Public Affairs, or designee, NASA Headquarters, Washington, DC 20546.

(d) Use of the NASA Insignia for any other purpose than as prescribed in this section is prohibited, except that the Associate Administrator for Public Affairs may authorize on a case-by-case basis the use of the NASA Insignia for other purposes when the Associate Administrator for the Public Affairs deems such use to be appropriate.

### § 1221.111 Use of the NASA Logotype.

The NASA Logotype has been retired and is used only in an authentic historical context, and only with prior written approval of the NASA Administrator.

### § 1221.112 Use of the NASA Program Identifiers.

(a) Official NASA Program Identifiers will be restricted to the uses set forth in this section and to such other uses as the Associate Administrator for Public Affairs may specifically approve.

(b) Specific approval is given for the following uses:

(1) Use of exact reproductions of a badge in the form of a patch made of cloth or other material, or a decal, or a gummed sticker on articles of wearing apparel and personal property items; and

(2) Use of exact renderings of a badge on a coin, medal, plaque, or other commemorative souvenirs.

(c) The manufacture and sale or free distribution of identifiers for the uses approved or that may be approved under paragraphs (a) and (b) of this section are authorized.

(d) Portrayal of an exact reproduction of a badge in conjunction with the advertising of any product or service will be approved on a case-by-case basis by the Associate Administrator for Public Affairs.

(e) The manufacture, sale, or use of any colorable imitation of the design of an official NASA Program Identifier will not be approved.

### § 1221.113 Use of the NASA Flags.

(a) The NASA Flag is authorized for use only as follows:

(1) On or in front of NASA buildings.

(2) At NASA ceremonies.

(3) At conferences (including display in NASA conference rooms).

(4) At governmental or public appearances of NASA executives.

(5) In private offices of senior officials.

(6) As otherwise authorized by the NASA Administrator or designee.

(7) The NASA Flag must be displayed with the United States Flag. When the United States Flag and the NASA Flag are displayed on a speaker's platform in an auditorium, the United States Flag must occupy the position of honor and be placed at the speaker's right as the speaker faces the audience, with the NASA Flag at the speaker's left.

(b) The NASA Administrator's, Deputy Administrator's and Associate Deputy Administrator's Flags shall be displayed with the United States Flag in the respective offices of these officials but may be temporarily removed for use at the discretion of the officials concerned.

### § 1221.114 Approval of new or change proposals.

(a) Except for NASA Astronaut Mission Crew Badges/Patches, any proposal to change or modify the emblematic devices set forth in this subpart or to introduce a new emblematic device other than as prescribed in this subpart requires the written approval of the NASA Administrator with prior approval and recommendation of the Director, Public Services Division.

(b) In addition to the written approval of the NASA Administrator, any proposal for a new or for a modification to the design of the NASA Insignia may also be submitted to the Commission of Fine Arts for its advice as to the merit of the design. If approved in writing by the NASA Administrator

and advice received from the Commission of Fine Arts, the NASA Insignia and the use of such NASA Insignia must be prescribed in this subpart and published in the FEDERAL REGISTER.

(c) Proposals to establish, change, or modify NASA Astronaut Crew Mission Badges/Patches requires the written approval of the Director, Flight Crew Operations, Johnson Space Center; Center Director, Johnson Space Center; and the Associate Administrator for Space Flight. Decals/patches/badges may be produced as soon as the approval cycle is completed.

### §1221.115 Violations.

(a) *NASA Seal.* Any person who uses the NASA Seal in a manner other than as authorized in this subpart shall be subject to the provisions of Title 18 U.S.C. 1017.

(b) *NASA Insignia, NASA Logotype, and NASA Program Identifiers.* Any person who uses the NASA Insignia, NASA Logotype, or NASA Program Identifier in a manner other than as authorized in this subpart shall be subject to the provisions of title 18 U.S.C. 701.

### §1221.116 Compliance and enforcement.

In order to ensure adherence to the authorized uses of the NASA Seal, the NASA Insignia, the NASA Logotype, NASA Program Identifiers, and the NASA Flags as provided, in this subpart, a report of each suspected violation of this subpart (including the use of unauthorized NASA Insignias) or of questionable usages of the NASA Seal, the NASA Insignia, the NASA Logotype, NASA Program Identifiers, or the NASA Flags, shall be submitted to the Inspector General, NASA Headquarters, in accordance with NASA Management Instruction 9810.1, ''The NASA Investigations Program.''

## Subpart 1221.2—The Congressional Space Medal of Honor

AUTHORITY: Pub. L. 91–76, September 29, 1969.

SOURCE: 43 FR 15624, Apr. 14, 1978, unless otherwise noted.

### §1221.200 Scope.

This subpart establishes procedures for nominating an astronaut for the Congressional Space Medal of Honor.

### §1221.201 Basis for award of the medal.

(a) The standard of award for the Congressional Space Medal of Honor is established by Pub. L. 91–76 (42 U.S.C. 2461) which provides that the President may award the Medal to any ''astronaut who in the performance of his duties has distinguished himself by exceptionally meritorious efforts and contributions to the welfare of the Nation and of mankind.''

(b) Only one Congressional Space Medal of Honor may be awarded to a person. However, for each succeeding act that would otherwise justify the award of the Medal, the President may award a suitable bar or other device.

(c) The Medal may be awarded to any person who is or has been designated to travel in space and who has distinguished himself or herself while undertaking duties in preparation for, execution of, or subsequent to, but in connection with, a space flight.

(d) The Medal may be awarded for actions occurring before the effective date of this subpart 1221.2, and, when appropriate, posthumously.

### §1221.202 Description of the medal.

The description of the Congressional Space Medal of Honor, which was designed by the Institute of Heraldry, U.S. Army, is set forth in appendix A to this subpart. Each person awarded the Medal also shall receive a citation describing the basis for the award.

### §1221.203 Nominations.

(a) Formal nominations for award of the Congressional Space Medal of Honor on behalf of NASA will be made by the Administrator to the President.

(b) Any person may recommend to the Administrator that an astronaut be nominated for award of the Medal. Such a recommendation must be in writing, and must describe in concise detail the events believed to warrant award of the Medal. The recommendation should, if appropriate, be accompanied by supporting documentation,

such as eyewitness statements, extracts from official records, sketches, photographs, etc.

(c) All recommendations for nominations submitted to the Administrator or made on his own initiative will be referred to the NASA Incentive Awards Board for the purpose of investigating and making findings of fact and giving advice to the Administrator.

(d) Any recommendation involving an astronaut who is a member of the armed services on active duty or who is employed by another agency of the Federal Government but temporarily assigned or detailed to NASA shall also be transmitted to the Secretary of Defense or the head of the employing agency, as appropriate, for his or her recommendation.

(e) The Administrator will forward to the President his recommendation, and that of the astronaut's employing agency, as appropriate.

### § 1221.204 Proceedings of the NASA Incentive Awards Board.

The NASA Incentive Awards Board shall thoroughly consider the facts giving rise to a recommendation for nomination and shall prepare a report for the Administrator. The Board should, to the extent practicable, coordinate its efforts with those of the astronaut's employing agency, as appropriate. Its final report must take into account any pertinent information submitted by the employing agency.

## APPENDIX A TO PART 1221—CONGRESSIONAL SPACE MEDAL OF HONOR

### OBVERSE

#### DESCRIPTION

A circular green enamel wreath of laurel surmounted by a five-pointed gold star (with vertical point downward) and issuing from between each point a gold flame, the star surmounted by a light blue enamel cloud bank with five lobes edged in gold bearing a five-pointed dark blue enamel star fimbriated gold and charged in center with a diamond; standing upon the wreath at top center a gold eagle with wings displayed.

#### SYMBOLISM

The laurel wreath, a symbol of great achievement, with the overlapping star points, simulates space vehicles moving to greater accomplishments through space. The flames signify the dynamic energy of the rocket era and the imagination of the men in the space program of the United States. The stylized glory cloud alludes to the glory in the coat of arms of the United States and to the high esteem of the award. The dark blue voided star symbolizes the vast mysteries of outer space while the brilliancy of the feat is represented by a diamond. The eagle with wings raised in the spirit of peace represents man's first landing on another planet.

### REVERSE

#### DESCRIPTION

The reverse bears in center the inscription ''CONGRESSIONAL'' arranged in a semicircle above the inscription ''SPACE MEDAL PRESENTED TO''; in base is space for the name of the recipient and the date all within an outer circle of fifty stars.

### SUSPENSION RIBBON

#### DESCRIPTION

A ribbon 1⅜ inches in width consisting of the following vertical stripes: gold 1/16 inch, dark blue ¼ inch, light blue 9/32 inch, white 1/16 inch, red 1/16 inch, white 1/16 inch, light blue 9/32 inch, dark blue ¼ inch, gold 1/16 inch.

CABLE NOS. OF COLORS,p0,6/7

| | |
|---|---|
| Gold | 65021 (old gold). |
| Dark Blue | 70076 (independence blue). |
| Blue | 65014 (light blue). |
| Red | 65006 (scarlet). |
| White | 65005. |

#### SYMBOLISM

The scarlet center line on the white band symbolizes the courage of the astronauts in the nation's manned space program and the fire power of rockets that carry the crew through the earth's atmosphere (light blue); the light blue is the same color as the chief of the shield of the coat of arms of the United States which appears on the President's flag. The dark blue symbolizes the hostile environment of space, the gold edge representing success and accomplishment. Red, white and blue are also the national colors of the United States.

### MINIATURE

#### DESCRIPTION

A one-half size replica of the medal and suspension ribbon approximately 2 5/16 inches in overall length.

LAPEL EMBLEM

DESCRIPTION

A miniature of the obverse of the medal, 9/16 inch in diameter, all gold with a diamond in center.

ROSETTE

DESCRIPTION

One-half inch in diameter in the colors of the ribbon.

## PART 1230—PROTECTION OF HUMAN SUBJECTS

Sec.

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

SOURCE: 56 FR 28012, 28019, June 18, 1991, unless otherwise noted.

### §1230.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in §1230.102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in §1230.102(e) must be reviewed and approved, in compliance with §§1230.101, 1230.102, and 1230.107 through 1230.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at

risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

(i) The human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:

(i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the FEDERAL REGISTER or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this

policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the FEDERAL REGISTER or in such other manner as provided in department or agency procedures.[1]

[56 FR 28012, 28019, June 18, 1991; 56 FR 29756, June 28, 1991]

**§1230.102 Definitions.**

(a) *Department or agency head* means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) *Institution* means any public or private entity or agency (including federal, state, and other agencies).

(c) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) *Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

(e) *Research subject to regulation*, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

*Intervention* includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. ''Private information'' includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) *IRB* means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by

[1] Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A–D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

other institutional and federal requirements.

(i) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) *Certification* means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

**§ 1230.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.**

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Protection from Research Risks, HHS, and approved for federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under § 1230.101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with § 1230.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to

the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under §1230.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by §1230.103 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by §1230.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

(Approved by the Office of Management and Budget under control number 9999–0020)

[56 FR 28012, 28019, June 18, 1991; 56 FR 29756, June 28, 1991]

### §§1230.104–1230.106 [Reserved]

### §1230.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these

areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

### § 1230.108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in § 1230.103(b)(4) and, to the extent required by, § 1230.103(b)(5).

(b) Except when an expedited review procedure is used (see § 1230.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

### § 1230.109 IRB Review of Research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 1230.116. The IRB may require that information, in addition to that specifically mentioned in § 1230.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § 1230.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 1230.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the FEDERAL REGISTER, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies,

through periodic republication by the Secretary, HHS, in the FEDERAL REGISTER. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

(b) An IRB may use the expedited review procedure to review either or both of the following:

(1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk,

(2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in §1230.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

### §1230.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by §1230.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by §1230.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

### §1230.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials

of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

### § 1230.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 1230.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

### § 1230.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described is § 1230.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in §§ 1230.103(b)(4) and 1230.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by § 1230.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 1230.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph

(c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 1230.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by § 1230.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document stating that the elements of informed consent required by § 1230.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 1230.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under § 1230.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy,

and certification submitted, by the institution, to the department or agency.

### § 1230.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency, and final approval given to the proposed change by the department or agency.

### § 1230.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

### § 1230.121 [Reserved]

### § 1230.122 Use of Federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

### § 1230.123 Early termination of research support: Evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

### § 1230.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

## PART 1232—CARE AND USE OF ANIMALS IN THE CONDUCT OF NASA ACTIVITIES

Sec.
1232.100 Scope.
1232.101 Applicability.
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1232.103 Definitions.
1232.104 Implementation procedures by non-NASA institutions.
1232.105 Implementation procedures by NASA field installations.
1232.106 Management authority and responsibility.
1232.107 Sanctions.

AUTHORITY: 42 U.S.C. Sec. 2451; Pub. L. 89–544, as amended; 7 U.S.C. Sec. 2131; 39 U.S.C. Sec. 3001; 9 CFR subchapter A parts 1, 2, 3, and 4; and Pub. L. 99–158, Sec. 495.

SOURCE: 54 FR 35870, Aug. 30, 1989, unless otherwise noted.

**§ 1232.100 Scope.**

This rule establishes the policy, implementation procedures, and management authority and responsibility for the care and use of vertebrate animals (hereinafter referred to as ''animal subjects'') in the conduct of NASA activities.

**§ 1232.101 Applicability.**

This rule applies to NASA Headquarters and NASA field installations and will be followed in all activities using animal subjects that are supported by NASA, conducted in NASA facilities, aircraft, or spacecraft, or which involve NASA to any degree. All activities using animal subjects conducted under a contract, grant, cooperative agreement, memorandum of understanding, or joint endeavor agreement entered into by NASA and another Government agency, private entity, non-Federal public entity, or foreign entity are included within the scope of this rule.

**§ 1232.102 Policy.**

(a) It is NASA policy to require its laboratories and the institutions performing NASA-supported activities using animal subjects to comply with the Animal Welfare Act of 1966 (Pub. L. 89–544), as amended (Pub. L. 91–579, Pub. L. 94–279, and Pub. L. 99–198), 7 U.S.C. 2131 et seq., and 39 U.S.C. 3001, and with the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR subchapter A parts 1, 2, 3, and 4) pertaining to the care, handling, and treatment of animal subjects held or used for research, testing, teaching, or other activities supported by the Federal government. Investigators shall follow the guidelines described in the National Institutes of Health (NIH) Publication No. 85–23 (Rev. 1985), ''Guide for the Care and Use of Laboratory Animals'' (the Guide) or subsequent revisions. Attention is called to the U.S. Government ''Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training'' on pp. 81–83 of the Guide. In order to implement these guidelines and principles, investigators will comply with the revised Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals (hereinafter referred to as PHS Policy) effective November 1, 1986.[1]

(b) This rule authorizes NASA to have the same authority for NASA-supported programs as that delegated to PHS by the PHS Policy, including the functions and responsibilities of the Animal Care and Use Committees (ACUC's).

(c) All research supported by NASA that involves activities using animal subjects shall be conducted under protocols that conform to this rule and that are reviewed and approved as prescribed in this rule.

**§ 1232.103 Definitions.**

The following definitions of terms comply with the PHS Policy and apply to the conduct of all NASA activities related to the care and use of animal subjects.

(a) *Activity* includes research, testing of hardware for animal use, flight experimentation, and any other tasks involving the use of animal subjects.

(b) *Animal* is any live vertebrate animal.

(c) *Animal Care and Use Committee* (ACUC) is the committee established at each institution and NASA field installation involved in research with animal subjects. It is responsible for evaluating the care and use of animal subjects at the facility and for ensuring that the care and use of animal subjects at the facility is in compliance with this rule and PHS Policy.

(d) *Authorized NASA Official* is the Director, Life Sciences Division, NASA Headquarters, or designee, who is the NASA Administrator's representative and is responsible for all NASA activities involving animal subjects. This individual is responsible for implementation of the provisions of this rule and for ensuring that agency programs involving animal subjects comply fully with all applicable laws, regulations, and guidelines.

(e) *Field Installation Director* is the Director of a NASA Field Installation, or designee, who is the institutional official responsible for the care and use of

[1] Available from the Office of Protection from Research Risks (OPRR), National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Room 5B59, Bethesda, MD 20892, Telephone 301–496–7005.

animal subjects in research conducted at that field installation and for ensuring compliance with this rule at that field installation.

(f) *Investigator* is any person who uses or proposes to use live animal subjects in NASA-supported activities, e.g., receives funds, salaries, or support under a grant, award, agreement, contract, or direct employment by NASA, or the use of any NASA facilities, aircraft, or spacecraft for the purpose of carrying out research, tests, or experiments using animal subjects.

(g) *PHS Assurance* is a document prepared by an awardee institution assuring its compliance with PHS Policy.

(h) *Research of Flight Program Manager* is the NASA Headquarters manager of each program in which NASA has a manifest interest.

(i) *Supported* pertains to activities either funded in part or in whole by NASA or an approved activity that is not funded by NASA but that utilizes NASA facilities, including spacecraft and aircraft.

(j) *Veterinarian* is the NASA attending veterinarian, a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated authority and responsibility for activities involving animal subjects at the NASA field installation.

### §1232.104 Implementation procedures by non-NASA institutions.

(a) *Proposal Information*. No animal subjects may be utilized unless a proposal justifying and describing their use is submitted to NASA for approval. The required proposal information is outlined in the PHS Policy (IV.D.1.a.–e.).

(b) *Proposal Approval by the Institutional ACUC.* Before a proposal for research involving the use of animal subjects will be considered for NASA support, the NASA Headquarters Research or Flight Program Manager must receive a statement that the research has been reviewed in accordance with the PHS Policy (IV.C.) and approved by the appropriate ACUC at the participating institution.

(c) *Proposal Approval for Flight Experiments.* In addition to the institution's ACUC review, activities involving animal subjects to be flown on NASA spacecraft will be subject to review and approval by the Ames Research Center (ARC) ACUC. The ARC ACUC will submit each evaluation report to the ARC Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters. Animal activities to be flown onboard NASA manned spacecraft may also be subject to review by the Human Research Policy and Procedures Committee (HRPPC) at the Johnson Space Center (JSC). Animal activities utilizing the facilities of any NASA field installation are also subject to approval of that field installation's ACUC (§1232.105(d)).

(d) *Institutions with PHS Assurance on File.* The institution, by an approved or provisionally acceptable Assurance on file at the NIH Office for Protection from Research Risks (OPRR), Department of Health and Human Services (HHS), assures NASA that it will comply with the PHS Policy. The Assurance file number must be included in the research proposal submitted to NASA.

(e) Institutions with no PHS Assurance on File. Proposals from institutions without an approved Assurance on file with the NIH OPRR will first be peer-reviewed for scientific merit. If the proposed research is deemed worthy of support, NASA will arrange for a special Assurance to be negotiated by the Director, Life Sciences Division, NASA Headquarters. The arrangements for a special Assurance review by NIH should be undertaken in consultation with the NASA representative to the Interagency Research Animal Committee (IRAC) and will be handled on a case-by-case basis.

(f) Foreign institutions must comply with the PHS Policy (see Section II Of PHS Policy) and this rule before being supported by NASA for any activities involving animal subjects.

**§ 1232.105 Implementation procedures by NASA field installations.**

(a) *Proposal Information.* The information required for proposals involving the use of animal subjects is identical to that described in § 1232.104(a).

(b) *Proposal Approval by the NASA ACUC.* Before a proposal for research involving the use of animal subjects will be considered for NASA support, the NASA Headquarters Research or Flight Program Manager must receive a statement that the research has been reviewed in accordance with PHS Policy (IV.C.) and approved by the ACUC at the appropriate field installation.

(c) *Proposal Approval for Flight Experiments.* In addition to the Field Installation ACUC review, activities involving animal subjects to be flown on NASA spacecraft will be subject to review and approval by the ARC ACUC. The ARC ACUC will submit each evalaution report to the ARC Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters. Animal activities to be flown onboard NASA manned spacecraft may also be subject to review by the HRPPC at JSC.

(d) *Approval for Use of Field Installation Facilities.* The NASA Field Installation ACUC will review and approve or disapprove those parts of proposals that call for the use of their facilities to conduct any activity involving animal subjects (e.g., Kennedy Space Center or ARC Dryden facilities used to support experiments using animal subjects). The ACUC will submit each evaluation report to the Field Installation Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters.

(e) *NASA Animal Care and Use Committees.* (1) The Director of each NASA Field Installation that is involved in animal research activities will establish an ACUC to ensure compliance with the policies and provisions of this rule. The membership of the ACUC shall be in accordance with PHS Policy.

(2) The NASA Field Installation ACUC's will review and approve or disapprove all proposals using animal subjects. In accordance with the PHS Policy (IV.C.), the ACUC will submit each report to the Field Installation Director who will, upon request, transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters.

(3) NASA ACUC's have the authority to approve, disapprove, or require changes to be made in those components of proposals involving the care and use of animal subjects that are submitted by NASA investigators. All decisions shall be based on the response of a majority of a quorum of the members. A minority opinion including abstentions should be recorded; this record should include a justification for the opinion.

(4) The ACUC shall conduct continuing review of proposals at appropriate intervals as determined by the ACUC, but not less than once every 3 years.

(5) Proposals that have been approved by the ACUC may be subject to further appropriate review by the Authorized NASA Official, NASA Headquarters. However, the official may not approve those sections of a proposal related to the care and use of animal subjects if they have not been approved by the ACUC.

(6) Once experimental procedures are approved, no substantial changes can be made unless a formal request with appropriate justification for such a request is submitted to and approved by the appropriate ACUC. If the experiment involves exposure of the flight crew to the animal subjects, the HRPPC at JSC must review and approve the proposed modifications. Copies of ACUC approval of the proposed modifications shall be submitted to the Field Installation Director who will, upon request, transmit the report to the Authorized NASA Official, NASA Headquarters.

(7) Other functions of the field installation ACUC include:

(i) Reviewing at least once every 6 months the field installation's program for humane care and use of animals, using the Guide as a basis for evaluation;

(ii) Inspecting at least once every 6 months all of the field installation's animal facilities (including satellite facilities), using the Guide as a basis for evaluation;

(iii) Preparing reports of the ACUC evaluations conducted as required by § 1232.105 (e)(7)(i) and (ii), and submitting the reports to the Field Installation Director. (Note: the reports shall be updated at least once every 6 months upon completion of the required semiannual evaluations and shall be maintained by the field installation and made available to the Authorized NASA Official upon request. The reports must contain a description of the nature and extent of the field installation's adherence to the Guide and this rule and must identify specifically any departures from the provisions of the Guide and this rule, and must state the reasons for each departure. The reports must distinguish significant deficiencies from minor deficiencies. A significant deficiency is one which, consistent with PHS Policy, and, in the judgment of the ACUC and the Field Installation Director, is or may be a threat to the health or safety of the animals. If program or facility deficiencies are noted, the reports must contain a reasonable and specific plan and schedule for correcting each deficiency.)

(iv) Reviewing concerns involving the care and use of animals at the field installation;

(v) Making recommendations to the Field Installation Director regarding any aspect of the field installation's animal program, facilities, or personnel training.

(f) *NASA Assurances.* Each NASA field installation involved in activities using animal subjects must assure that its programs and facilities have been evaluated and accredited by the American Association for the Accreditation of Laboratory Animal Care (AAALAC). Written assurance of compliance with the provisions of the PHS Policy and this rule is also required from NASA field installations involved in animal activities before approval of any such activity. This Assurance should follow the sample PHS Assurance format shown on pages 19–26 of the PHS Policy and must be submitted by the Field Installation Director to the Authorized NASA Official. The Assurance is subject to renewal every 5 years.

(g) *Recordkeeping Requirements.* (1) Each NASA field installation involved in activities using animal subjects shall maintain:

(i) An Assurance of compliance with PHS Policy and this rule (§ 1232.105 (f));

(ii) Minutes of ACUC meetings, including records of attendance, activities of the committee, and committee deliberations;

(iii) Records of applications, proposals, and proposed significant changes in the care and use of animals and whether ACUC approval was given or withheld;

(iv) Records of semiannual ACUC reports and recommendations (including minority views) as forwarded to the Field Installation Director;

(v) Records of AAALAC accreditation; and

(vi) The Field Installation's Animal Users Guide and Animal Care Facility Management Manual. The Field Installation Animal Users Guide and Animal Care Facility Management Manual should be revised at appropriate intervals.

(2) All records shall be maintained for at least 3 years; records that relate directly to applications, proposals, and proposed significant changes in ongoing activities reviewed and approved by the ACUC shall be maintained for the duration of the activity and for an additional 3 years after completion of the activity. All records shall be furnished upon request to the Authorized NASA Official.

(h) *Reporting Requirements.* For each NASA field installation involved in activities using animal subjects:

(1) Statements of ACUC approval of research proposals, ACUC evaluation reports of flight experiment proposals and of experiment proposals utilizing field installation facilities, and the field installation's Assurance of compliance shall be submitted in the manner prescribed in §§ 1232.104(c) and 1232.105 (b), (c), (d), and (f).

(2) At least once every 12 months, the ACUC, through the Field Installation Director, shall report in writing to the Authorized NASA Official:

(i) Any change in the field installation's program or facilities that would affect the AAALAC accreditation status;

(ii) Any change in the description of the field installation's program for animal care and use;

(iii) Any changes in the ACUC membership;

(iv) Notice of the dates that the ACUC conducted its semiannual evaluations of the field installation's program and facilities and submitted the evaluations to the Field Installation Director;

(v) A statement that the field installation has no changes to report as specified in § 1232.105(h)(2) (i), (ii), or (iii) of this rule, if there are no changes.

(3) The ACUC, through the Field Installation Director, shall promptly provide the Authorized NASA Official with a full explanation of the circumstances and actions taken with respect to:

(i) Any serious or continuing noncompliance with this rule and PHS Policy;

(ii) Any serious deviation from the provisions of the Guide; or

(iii) Any suspension of an activity by the ACUC.

(4) Reports filed under § 1232.105 (h) of this rule shall include any minority views filed by members of the ACUC.

(5) A copy of the U.S. Department of Agriculture (USDA) Annual Report will be furnished to the Authorized NASA Official.

**§ 1232.106 Management authority and responsibility.**

(a) *Authorized NASA Official.* The Authorized NASA Official is the NASA Administrator's representative and is responsible for all NASA activities involving animal subjects. This individual is responsible for implementation of the provisions of this rule and for ensuring that agency programs involving animal subjects comply fully with all applicable laws, regulations, and guidelines.

(b) *Field Installation Director.* The Field Installation Director is responsible for and has the authority to:

(1) Sign the field installation's Assurance, making a commitment on behalf of the field installation that the requirements of the PHS Policy and this rule will be met in all field installation activities involving animal subjects;

(2) Create and oversee the functioning of the field installation ACUC;

(3) Decide and administer sanctions in cases of noncompliance with this rule;

(4) Fulfill the reporting requirements assigned to this individual in § 1232.105(h); and

(5) Sign the annual USDA report.

(c) *NASA Field Installation(s) ACUC Responsibility.* Each NASA Field Installation ACUC is responsible to its Field Installation Director for the activities described in §§ 1232.104(c) and 1232.105 (b), (c), (d), (e) and (h).

(d) *Research or Flight Program Manager Responsibility.* The Research or Flight Program Manager is responsible for ascertaining the presence of the required PHS Assurance file number for proposals involving animal subjects received from non-NASA institutions, and a statement of ACUC review and approval of all NASA and non-NASA proposals involving animal subjects. No awards for activities involving animal subjects can be made without this documentation [see §§ 1232.104 (b) and (d) and 1232.105(b)].

(e) *NASA Veterinarian(s) Responsibility.* NASA veterinarian(s) have direct or delegated authority and responsibility for activities involving animal subjects at their field installation. Such authority and responsibilities shall include recommending approval or disapproval of procedures involving animal subjects as a member of the ACUC, continual monitoring of these activities, surveillance of the health and condition of animal subjects, and reporting any observed deviations from approved procedures involving animal subjects to the Field Installation Director and the ACUC. In the case of deviation from ACUC-approved practices or procedures, the veterinarian shall have the authority to immediately halt such procedures until they are reviewed and resolved by the ACUC. In cases of a conflict concerning animal usage by an investigator that cannot be resolved between him/her and the veterinarian, the matter may be brought to the attention of the Field Installation ACUC for review and recommendation for action as set forth in this rule. Whereas the performance of the veterinarian's duties can be delegated to other qualified individuals, the ultimate responsibility rests with

the veterinarian. This responsibility extends not only to the Animal Care Facility (ACF), but also to other locations where animal subjects are used.

Other specific areas of responsibility and authority vested in the veterinarian are:

(1) *Entry of personnel into the ACF.* The veterinarian has the responsibility to develop access procedures to the ACF and submit them to the ACUC for approval.

(2) *Personnel Training.* The veterinarian will participate in the training of personnel in the handling of animal subjects and in specimen sampling procedures.

(3) *Animal Training.* The veterinarian will monitor all schedules and procedures involving the training and acclimation of animal subjects.

(4) *Surgery and Surgical Procedures.* The veterinarian will monitor all surgical procedures and verify that the principles of the Guide with regard to aseptic surgery are employed. Post-surgical recovery procedures are included. If necessary, training will be provided by the veterinarian to bring procedures conducted by investigators to the level of these standards.

(5) *Veterinary Medical and Engineering Procedures.* The veterinarian will monitor all veterinary medical and engineering procedures performed on animal subjects and verify their appropriateness. The veterinarian will actively participate in identifying and/or establishing the design requirements and adequacy of animal facilities for ground and spaceflight-related activities.

(f) *NASA Representative to the Interagency Research Animal Committee (IRAC).* The NASA representative to the IRAC will obtain information of all cases in which an institution's Assurance has been revoked by the PHS. The NASA IRAC representative will notify NASA ACUC's, Field Installation Directors, the Authorized NASA Official, and all Headquarters Research and Flight Program Managers so that they can determine which NASA awards involving the use of animal subjects are affected and can take appropriate sanctions.

**§1232.107 Sanctions.**

(a) *Non-NASA Institutions.* Principal investigators not employed by NASA whose activities are supported by NASA but whose activities using animal subjects are restricted to non-NASA facilities shall be subject to the control of their institution's ACUC and responsible institutional official. Notification of noncompliance with this rule shall be made either as described in §1232.106(f) or by the non-NASA institution to the Director of the NASA Field Installation through which the activity has been supported and to the Authorized NASA Official. Any continued noncompliance may be caused for termination of funding or support.

(b) *NASA Field Installations.* (1) Inappropriate procedures on animal subjects by NASA principal investigators shall be halted by the NASA Field Installation Veterinarian or line management and brought to the attention of the ACUC if the issue cannot be immediately resolved. The ACUC will review the activity and report any noncompliance with this rule to the Field Installation Director. Principal investigators not employed by NASA, whose activities using animal subjects are performed in NASA facilities, aircraft, or spacecraft, are subject to similar action. Such noncompliance will be cause for sanctions. The principal investigator can contest, in writing, these decisions to the ACUC.

(2) The ACUC as the agent of the Field Installation Director may suspend an activity that it previously approved if it determines that the activity is not being conducted in accordance with applicable provisions of the Animal Welfare Act, the Guide, PHS Policy requirements, or this rule.

(3) Any suspension or termination of approval will include a statement of the reasons for the action and will be promptly reported to the principal investigator and the appropriate Field Installation Director. In the case of investigators from non-NASA institutions, notification should be sent to the investigator, the appropriate institution, and the Director of the Field Installation through which the activity has been supported. If the ACUC suspends an activity involving animal subjects, the Field Installation Director in

consultation with the ACUC shall review the reasons for suspension, take appropriate corrective action, and report that action with a full explanation to the Authorized NASA Official, NASA Headquarters. If an ACUC recommends disapproval suspension, termination, or conditional approval of an activity, the principal investigator will be given the opportunity to ask for reconsideration of the decision in person and/or in writing to the appropriate NASA ACUC.

(4) If, after notification of the Field Installation Director and an opportunity for correction, such deficiencies or deviations remain uncorrected, the ACUC will notify (in writing) the Authorized NASA Official, NASA Headquarters, who is then responsible for all corrective action to be taken.

# PART 1240—INVENTIONS AND CONTRIBUTIONS

## Subpart 1—Awards for Scientific and Technical Contributions

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AUTHORITY: Sec. 306 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2458), and the Federal Technology Transfer Act of 1986, Sec. 12, 15 U.S.C. 3710b(1).

SOURCE: 55 FR 614, Jan. 8, 1990, unless otherwise noted.

## Subpart 1—Awards for Scientific and Technical Contributions

### § 1240.100 Purpose.

This subpart prescribes procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to 42 U.S.C. 2458, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986, Section 12, 15 U.S.C. 3710b(1).

### § 1240.101 Scope.

This subpart applies to any scientific or technical contribution, whether or not patentable, which is determined by the Administrator after referral to the Inventions and Contributions Board to have significant value in the conduct of aeronautical and space activities for which an application for award has been submitted to NASA under 42 U.S.C. 2458.

### § 1240.102 Criteria.

(a) Only those contributions to NASA which have been (1) used in a NASA program or adopted or sponsored or supported by NASA, and (2) found to have significant value in the conduct of aeronautical and space activities will be recommended for award under this subpart.

(b) In determining the amount, terms, and conditions of any award, the following criteria will be considered:

(1) The value of the contribution to the United States;

(2) The aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contributions by the United States; and

(4) Such other factors as the Administrator shall determine to be material.

### § 1240.103 Applications for awards.

(a) *Eligibility*. Applications for award may be submitted by any person including any individual, partnership, corporation, association, institution, or other entity.

(b) *Information required*. Applications for award should be addressed to the Inventions and Contributions Board

(herein referred to as the Board), National Aeronautics and Space Administration, Washington, DC 20546, and will contain:

(1) The name and address of the applicant, the person's relationship to the contributor if the contribution is made by one other than the applicant, and the names and addresses of any others having information as to the value or usage of the contribution;

(2) A complete written description of the contribution, in the English language, accompanied by drawings, sketches, diagrams, or photographs illustrating the nature of the contribution and the technical and scientific principles upon which it is based, any available test or performance data or observations of pertinent scientific phenomena, and the aeronautics or space application of the contribution;

(3) The date and manner of any previous submittal of the contribution to any other United States Government agency, and the name of such agency;

(4) The aggregate amount of any sums which have been expended by the applicant for the development of the contribution;

(5) The nature and extent of any known use of the contribution by the United States and by any agency of the United States Government;

(6) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States;

(7) Identification of any United States and foreign patents applied for or issued relating to the contribution; and

(8) An agreement to surrender all claims which such applicant may have for the use of such contribution by the Government.

(c) *General.* (1) Each contribution will be made the subject of a separate application in order that each contribution may be evaluated individually.

(2) Material constituting a possible hazard to safety or requiring unusual storage facilities should not be submitted, and will not be accepted. Models or intricate exhibits demonstrating the contribution will not be accepted unless specifically requested by the Board. In those few cases where such models or exhibits have been submitted pursuant to a request made by the Board, the same will be returned to the applicant upon written request from the applicant.

(3) It is the policy of the Board to use or disclose information contained in applications for awards for evaluation purposes only. Applications for awards submitted with restrictive legends or statements differing from this policy will be treated in accordance with the Board's policy.

### §1240.104 Special procedures—NASA and NASA contractor employees.

(a) A NASA Headquarters office, a NASA field installation, or a NASA contractor may submit to the Board an application for an award identifying the originator(s) of any scientific or technical contribution conceived or developed during the performance of a NASA program or contract, and which is considered to be of value in advancing the state of knowledge in space or aeronautical activities, whether or not the contribution is the subject of a NASA Tech Brief or of a U.S. patent application.

(b) When the Board receives written notice (NASA Form 1548) that the Associate General Counsel for Intellectual Property at NASA Headquarters or the cognizant Patent Counsel at a NASA field installation has authorized the filing of a U.S. patent application for an invention made and reported by an employee of NASA or an employee of a NASA contractor, the Board will recommend to the Administrator or a designee that an initial award of at least $500 be granted to a sole inventor, and an award in the amount of at least $250 will normally be granted to each of joint inventors. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the invention.

(c) When the Board receives written notice (NASA Form 1546) that the Technology Utilization Officer at a NASA field installation has approved for publication a selected NASA Tech Brief based on an innovation made and

reported by an employee of NASA or a NASA contractor, the Board will recommend to the Administrator or designee that an initial award of at least $150 be granted, and an award in at least that amount will be granted to each originator of the innovation. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the innovation.

(d) When a selected NASA Tech Brief has been approved for publication and the filing of a U.S. patent application has been authorized for the same contribution, the initial awards authorized in paragraphs (b) and (c) of this section will be cumulative.

(e) Awards authorized in paragraphs (a), (b), and (c) of this section will not be granted to a contributor who has previously received full compensation for, or on account of, the use of such a contribution by the United States.

(f) If a contribution, as first reported and evaluated, is judged not to merit a supplemental award, as provided for in paragraphs (a), (b), or (c) of this section, and the contribution is later proved to be of significant value, it may be submitted for reevaluation. Responsible NASA and NASA contractor officials are encouraged to periodically review such reported contributions, and to resubmit them for reconsideration through the same channels as originally reported.

### § 1240.105 Review and evaluation of contribution.

(a) A contribution will be initially reviewed by the Board on the basis of the material submitted by the applicant under § 1240.103(b).

(b) If it is determined that the contribution has been used in a NASA program, or adopted or sponsored or supported by NASA, the contribution will be evaluated for its significant value in the conduct of aeronautical or space activity.

(c) The Board will recommend an award for such contribution when, upon evaluation of its scientific and technical merits, it is determined to warrant an award of at least $250.

### § 1240.106 Notification by the Board.

(a) With respect to each completed application where the Board has recommended to the Administrator the granting of an award, and the Administrator has approved such award, the Board will notify the applicant of the amount and terms of the award. In the case of NASA employees or employees of NASA contractors, such notification will normally be made through the appropriate NASA field installation representative.

(b) Except for applications from NASA employees or employees of NASA contractors, where the Board does not propose to recommend to the Administrator the granting of an award, a notification will be provided which includes a brief statement of the reasons for such decision.

### § 1240.107 Reconsideration.

(a) In those cases where the Board does not recommend an award, the applicant may, within such period as the Board may set but in no event less than 30 days from notification, request reconsideration of the Board's decision.

(b) If reconsideration has been requested within the prescribed time, the applicant will, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file its statement setting forth the issues, points, authorities, arguments, and any additional material on which it relies.

(c) Upon filing of the reconsideration statement by the applicant, the case will be assigned for reconsideration by the Board upon the contents of the application, the record, and the reconsideration statement submitted by the applicant.

(d) If after reconsideration, the Board again does not propose to recommend the granting of an award, the applicant, after such notification by the Board, may request an oral hearing within the time set by the Board.

(e) An oral hearing without reconsideration may be granted upon determination of the Chairperson that good cause exists to do so.

**§1240.108 Hearing procedure.**

(a) Oral hearing held by the Board will be in accordance with the following procedures:

(1) If the applicant requests a hearing within the time set in accordance with §1240.107 (d) or (e), the Board will set a place and date for such hearing and notify the applicant.

(2) The applicant may be represented by an attorney or any other appropriately designated person.

(3) Hearings will be open to the public unless the applicant requests that a closed hearing be held.

(4) Hearings may be held before the full membership of the Board or before any panel of Board members designated by the Chairperson.

(5) Hearings will be conducted in an informal manner with the objective of providing the applicant with a full opportunity to present evidence and arguments in support of the application. Evidence may be presented through means of such witnesses, exhibits, and visual aids as are arranged for by the applicant. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the applicant, and the Board may, at its option, utilize the assistance and testimony of technical advisors or other experts.

(6) Subject to the provisions of §1240.103(c)(2), the applicant will submit a copy of any exhibit or visual aid utilized unless otherwise directed by the Board. The Board may, at its discretion, arrange for a written transcript of the proceedings and a copy of such transcript will be made available by the recorder for purchase by the applicant.

(7) No funds are available to defray traveling expenses or any other cost incurred by the applicant.

(b) [Reserved]

**§1240.109 Recommendation to the Administrator.**

Upon a determination by the Board that a contribution merits an award, the Board will recommend to the Administrator or a designee the terms and conditions of the proposed award, including a specific amount and distribution thereof for any multiple contributors. The recommendation of the Board to the Administrator or designee will reflect the views of the majority of the Board members. Dissenting views may be transmitted with the majority opinion.

**§1240.110 Release.**

Under subsection 306(b)(1) of the National Aeronautics and Space Act of 1958, as amended, no award will be made to an applicant unless the applicant submits a duly executed release, in a form specified by the Administrator, of all claims the applicant may have to receive any compensation (other than the award recommended) from the United States Government for use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any existing or future treaty or agreement with the United States, within the United States, or at any other place.

**§1240.111 Presentation of awards.**

(a) Monetary awards and accompanying written acknowledgments to employees of NASA will be presented in a formal ceremony by the appropriate Official-in-Charge at the Headquarters Office, or by the Director of the cognizant field installation or designee.

(b) Monetary awards and accompanying written acknowledgments to employees of NASA contractors will be forwarded to contractor officials for suitable presentation.

**§1240.112 Financial accounting.**

(a) An Award Check Receipt (NHQ DIV Form 622), which accompanies the transmittal of each group of award checks from the Board will be dated and signed by the responsible Award Liaison Officer/Technology Utilization Officer and returned to the Board without delay.

(b) Not later than December 10 of each year, the responsible field installation official will submit a report certifying that all award checks, which were issued and received by the field installation during the year, have been delivered to the proper employees of NASA and employees of NASA contractors. In the case of those checks that have not been delivered by December

10, the certification report will be accompanied by all undelivered checks and a brief explanation of the reasons for the failure to make delivery. This annual certification report is essential in order to assure that income and withholding tax totals for all awardees are correct and complete at the close of each calendar year.

### § 1240.113 Delegation of authority.

(a) The Associate Administrator for Management and the Chairperson, Inventions and Contributions Board, are delegated authority to execute grants of awards for significant scientific or technical contributions not exceeding $1000 per contributor, when in accordance with the recommendation of the Board and in conformity with applicable law and regulations.

(b) The Chairperson, Inventions and Contributions Board, is delegated authority to execute grants of initial awards upon the decision to file for a U.S. patent application, and upon approval to publish a selected NASA Tech Brief.

(c) No redelegation is authorized except by virtue of succession.

(d) The Chairperson, Inventions and Contributions Board, will ensure that feedback is provided so that the Administrator, through official channels, is currently informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated in this section.

## PART 1241 [RESERVED]

## PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

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## Subpart 1—Patent Waiver Regulations

AUTHORITY: 42 U.S.C. 2457, 35 U.S.C. 200 *et seq.*

SOURCE: 52 FR 43748, Nov. 16, 1987, unless otherwise noted.

### § 1245.100 Scope.

This subpart prescribes regulations for the waiver of rights of the Government of the United States to inventions made under NASA contract in conformity with section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457).

### § 1245.101 Applicability.

The provisions of the subpart apply to all inventions made or which may be made under conditions enabling the

Administrator to determine that the rights therein reside in the Government of the United States under section 305(a) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2457(a). The provisions do not apply to inventions made under any contract, grant, or cooperative agreement with a nonprofit organization or small business firm that are afforded the disposition of rights as provided in 35 U.S.C. 200–204 (Pub. L. 96–517, 94 Stat. 3019, 3020, 3022 and 3023; and Pub. L. 98–620, 98 Stat. 3364–3367).

**§1245.102 Definitions and terms.**

As used in this subpart:

(a) *Contract* means any actual or proposed contract, agreement, understanding, or other arrangement with the National Aeronautics and Space Administration (NASA) or another Government agency on NASA's behalf, including any assignment, substitution of parties, or subcontract executed or entered into thereunder, and including NASA grants awarded under the authority of 42 U.S.C. 1891–1893.

(b) *Contractor* means the party who has undertaken to perform work under a contract or subcontract.

(c) *Invention* includes any art, method, process, machine, manufacture, design, or composition or matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(d) *Made,* when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(e) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Govenment regulations available to the public on reasonable terms.

(f) *Board* means the NASA Inventions and Contributions Board established by the Administrator of NASA within the Administration under section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)).

(g) *Chairperson* means Chairperson of the NASA Inventions and Contributions Board.

(h) *Petitioner* means a contractor or prospective contractor who requests that the Administrator waive rights in an invention or class of inventions made or which may be made under a NASA contract. In the case of an identified invention, the petitioner may be the inventor(s).

(i) *Government agency* includes any executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(j) *Administrator* means the Administrator of the National Aeronautics and Space Administration or the Administrator's duly authorized representative.

**§1245.103 Policy.**

(a) In implementing the provisions of section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)), and in determining when the interests of the United States would be served by waiver of all or any part of the rights of the United States in inventions made in the performance of work under NASA contracts, the Administrator will be guided by the objectives set forth in the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451–2477) and by the basic policy of the Presidential Memorandum and Statement of Government Patent Policy to the Heads of the Executive Departments and agencies dated February 18, 1983. Among the most important goals are to provide incentives to foster inventiveness and encourage the reporting of inventions made under NASA contracts, to provide for the widest practicable dissemination of new technology resulting from NASA programs, and to promote early utilization, expeditious development, and continued availability of this new technology for commercial purposes and the public benefit. In applying this regulation, both the need for incentives to draw

forth private initiatives and the need to promote healthy competition in industry must be weighed.

(b) Several different situations arise when waiver of all or any part of the rights of the United States may be requested and are prescribed in §§ 1245.104–1245.106. Under § 1245.104, advance waiver of rights to any or all of the inventions which may be made under a contract may be requested prior to the execution of the contract, or within 30 days after execution of the contract. Waiver of rights to an identified invention made and reported under a contract are to be requested under § 1245.105, and may be requested under this provision even though a request under § 1245.104 was not made, or if made, was not granted. Waiver of foreign rights under § 1245.106 may be requested concurrently with domestic rights under § 1245.104 or § 1245.105, or may be made independently.

(c) With respect to inventions which may be or are made or conceived in the course of or under contracts for research, development or demonstration work awarded by NASA on behalf of the Department of Energy (DOE) or in support of a DOE program, on a reimbursable basis pursuant to agreement between DOE and NASA, the waiver policy, regulations, and procedures of DOE will be applied. NASA will normally grant waiver of rights to inventions made under contracts awarded by NASA on behalf of, or in support of, programs funded by another Government agency, unless the funding agency recommends and justifies denial of the waiver. See §§ 1245.110(c) and 1245.111(b).

### § 1245.104 Advance waivers.

(a) The provisions of this section apply to petitions for waiver of domestic rights to any or all of the inventions which may be made under a contract.

(b) The NASA Inventions and Contributions Board normally will recommend grant of a request for advance waiver of domestic rights submitted prior to execution of contract or within 30 days after execution of the contract unless the Board finds that the interests of the United States will be better served by restricting or eliminating all or part of the rights of the contractor in one or more of the following situations:

(1) When the contractor is not located in the United States or does not have a place of business in the United States or is subject to the control of a foreign government;

(2) When a determination has been made by Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any inventions made in the performance of work under the contract is necessary to protect the security of such activities; or

(3) Where the Board finds that exceptional circumstances exist, such that restriction or elimination of the right to retain title will better promote one or more of the following objectives:

(i) Promoting the utilization of inventions arising from federally supported research and development;

(ii) Encouraging maximum participation of industry in federally-supported research and development;

(iii) Ensuring that inventions are used in a manner to promote free competition and enterprise;

(iv) Promoting the commercialization and public availability of inventions made in the United States by United States industry and labor; and

(v) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c)(1) An advance waiver, when granted, will be subject to the reservations set forth in § 1245.107. Normally, the reservations of § 1245.107(a), License to the Government, and § 1245.107(b), March-in rights, will apply. However, should one or more of the situations set forth in paragraphs (b)(1) through (b)(3), of this section exist, rather than denying the advance waiver request, the Board may recommend restricting or eliminating only part of the rights of the contractor to the extent necessary to address the particular situation, consistent with the policy and goals of § 1245.103. In that event, the

waiver grant will be subject to additional reservations as provided for in §1245.107(c).

(2) An advance waiver, when granted, will apply only to inventions reported to NASA under the applicable terms of the contract and a designation made within 6 months of the time of reporting (or a reasonable time thereafter permitted for good cause shown) that the contractor elects title to the invention and intends to file or has filed a U.S. patent application. Such election will be made by notification in writing to the patent representative designated in the contract. Title to all other inventions made under the contract are subject to section 305(a) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2457(a). The granting of the advance waiver does not otherwise relieve a contractor of any of the invention identification or reporting requirements set forth in the applicable patent rights clause in the contract.

(3) The waiver shall extend to the invention claimed in any patent application filed on the reported invention, including any subsequent divisional or continuation application thereof, provided the claims of the subsequent application do not substantially change the scope of the reported invention.

(d) When a petition for waiver is submitted under paragraph (b) of this section, prior to contract execution, it will be processed expeditiously so that a decision on the petition may be reached prior to execution of the contract. However, if there is insufficient time or insufficient information is presented, or for other reasons which do not permit a recommendation to be made without unduly delaying execution of the contract, the Board will inform the contracting officer that no recommendation has been made and the reasons therefor. The contracting officer will then notify the petitioner of the Board's action.

(e) After notification by the contracting officer under paragraph (d) of this section, the petitioner may, upon its execution of the contract, or within 30 days, request the Board to reconsider the matter under paragraph (b) of this section either on the record or with any additional statements submitted in the subpart of the original petition.

(f) A waiver granted pursuant to a petition submitted under this section shall extend to any contract changes, modifications, or supplemental agreements, so long as the purpose of the contract or the scope of work to be performed is not substantially changed.

### §1245.105 Waiver after reporting inventions.

(a) The provisions of this section apply to petitions for waiver of domestic rights to identified inventions which have been reported to NASA and to which a waiver of rights has not been granted pursuant to §1245.104.

(b)(1) When an individual identified invention has been reported to NASA under the applicable terms of the contract and waiver of rights has not been granted under §1245.104, the Board normally will recommend grant of a request for waiver of domestic rights to such invention if the request is received within 8 months of first disclosure to NASA (or such longer period that the Board may permit for good cause shown), unless the Board finds that one or more of the situations set forth in §1245.104(b)(3)(i) through (v) exist. When granted, the waiver will be subject to the reservations set forth in §1245.107 in the same manner as discussed in §1245.104(c)(1).

(2) The waiver shall extend to the invention claimed in the patent application filed on the reported invention, including any subsequent divisional or continuation application thereof, provided the claims of the subsequent application do not substantially change the scope of the reported invention.

### §1245.106 Waiver of foreign rights.

(a) The Board will consider the waiver of foreign rights in any designated country concurrently with the waiver of domestic rights when so requested under §1245.104 or §1245.105.

(b) The Board will also consider a separate request for foreign rights for an individual identified invention in any designated country if a request was not made pursuant to paragraph (a) of this section, or for countries not designated pursuant to paragraph (a) of this section.

(c) Waiver of foreign rights will normally be granted under paragraph (a) or paragraph (b) of this section in any designated country unless; (1) The Board finds that the economic interests of the United States will not be served thereby; or unless (2) in the case of an individual identified invention under paragraph (b) of this section, NASA has determined, prior to the request, to file a patent application in the designated country.

(d) If, subsequent to the granting of the petition for foreign rights, the petitioner requests and designates additional countries in which it wishes to secure patents, the Chairperson may grant such request, in whole or in part, without further action by the Board.

**§ 1245.107 Reservations.**

(a) *License to the Government.* Any invention for which waiver of domestic or foreign rights has been granted under this subpart shall be subject to the reservation by the Administrator of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the invention throughout the world by or on behalf of the United States or any foreign government pursuant to any treaty or agreement with the United States.

(b) *March-in rights.* For any invention for which waiver of rights has been granted under this subpart, NASA has the right in accordance with 35 U.S.C. 203 and 210, and with the procedures set forth in § 1245.117 and 37 CFR 401.6, to require the contractor, an assignee, or exclusive licensee of the invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by the ''Preference for United States industry'' has not been obtained or waived or because a licensee of the exclusive right to use or sell any invention in the United States is in breach of such agreement.

(c) *Additional reservations.* In the event one or more of the situations set forth in § 1245.104 (b)(1) through (b)(3) exist, the Board may determine to recommend partial grant of the waiver request (rather than denial) by making the grant subject to additional reservations (than those set forth in (a) and (b) of this section) to the extent necessary to address the particular situation. Such additional reservations may include, but not be limited to, field-of-use or terrestrial-use limitations, or additions to the march-in rights.

**§ 1245.108 License to contractor.**

(a) Each contractor reporting an invention is granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on the invention and in any resulting patent in which the Government acquires title. The license extends to the contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right is transferable only with the approval of the Administrator except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(b) The contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the invention pursuant to an application for an exclusive license submitted in accordance with the Licensing of NASA Inventions (14 CFR

1245.2). This license will not be revoked in that field of use and/or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention available to the public on reasonable terms. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(c) Before revocation or modification of the license, the contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the contractor will be allowed 30 days (or any other time as may be allowed by the Administrator for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor shall have the right to appeal, under the Licensing of NASA Inventions (14 CFR 1245.2), any decision concerning the revocation or modification of its license.

**§1245.109 Assignment of title to NASA.**

(a) The instrument of waiver set forth in §1245.115(c) shall be voided by NASA with respect to the domestic title to any invention for which a patent application has not been filed within 1 year (or a reasonable time thereafter for good cause shown) from notification to NASA of election of title, as required by §1245.104(c)(2), for an advanced waiver pursuant to §1245.104, or within 1 year from the granting of a waiver for an individual invention granted pursuant to §1245.105.

(b) The instrument of waiver set forth in §1245.115(c) shall be voided by NASA with respect to title in any foreign country for which waiver has been granted pursuant to §1245.106, if a patent application has not been filed in that country (or in the European Patent Office or under the Patent Cooperation Treaty and that country designated) within either 10 months (or a reasonable time thereafter for good cause shown) from the date a corresponding U.S. patent application has been filed or 6 months (or a reasonable time thereafter for good cause shown) from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(c) In any country in which the waiver recipient decides not to continue prosecution of any application, to pay maintenance fees on, or defend in reexamination or opposition proceedings on a patent on a waived invention, the waiver recipient shall notify the patent representative within sufficient time for NASA to continue prosecution, pay the maintenance fee or defend the reexamination or opposition, and upon written request, convey title to NASA and execute all papers necessary for NASA to proceed with the appropriate action.

**§1245.110 Content of petitions.**

(a) Each request for waiver of domestic or foreign rights under §1245.104, §1245.105, or §1245.106 shall be by petition to the Administrator and shall include:

(1) An identification of the petitioner, its place of business, and address;

(2) If the petitioner is represented by counsel, the name, address, and telephone number of the counsel;

(3) A citation to the section (§1245.104, §1245.105, or §1245.106) under which the petition is submitted, the nature and extent of the rights requested, and a positive statement that waiver of rights under the cited section is being requested;

(4) If the petitioner is an employee inventor of the contractor, a statement from the contractor that the contractor does not object to this petition.

(5) Information identifying the proposed contract or resulting contract, if any;

(6) A designation of the country or countries, the United States of America and/or foreign, in which waiver of title is requested;

(7) A copy of the invention disclosure if the request is for an individual identified invention (under §1245.105);

(8) The name, address, and telephone number of the party with whom the Board is to communicate when the request is acted upon;

(9) Whether the petitioner is an entity of or under the control of a foreign government;

(10) The signature of the petitioner or its authorized representative; and

(11) The date of the petition.

(b) No specific forms need be used. Requests for advanced waiver should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) *Petitions for waiver under contracts funded by another agency.* The content of the petitions for waiver of title to inventions made under contracts awarded by NASA on behalf of the Department of Energy under § 1245.103(c) shall follow the procedures and form prescribed by and shall be acted on by that agency. Petitions under contracts awarded by NASA on behalf of other agencies will be coordinated with the agency before action is taken by the Board.

### § 1245.111 Submission of petitions.

(a) Petitions for advance waiver of domestic rights under § 1245.104 or for advance waiver of foreign rights under § 1245.106 presented prior to contract execution, must be submitted to the contracting officer. Any petition submitted by a prospective contractor and selected for negotiation of a contract will be processed and forwarded to the Board for consideration. All other petitions will be submitted to the patent representative designated in the contract for processing prior to forwarding to the Board.

(b) A copy of any waiver petitions submitted under § 1245.103(c) should be forwarded to the appropriate NASA field installation patent counsel, if not supplied earlier, for (1) transmittal to the Department of Energy for processing by that agency, or (2) coordination with other agencies, as applicable.

### § 1245.112 Notice of proposed Board action and reconsideration.

(a) *Notice.* Except as provided by § 1245.104(d), the Board will notify the petitioner, through the contracting officer, with respect to petitions for advance waiver prior to contract execution, and directly to the petitioner for all other petitions:

(1) Whether it proposes to recommend to the Administrator that the petition be:

(i) Granted in the extent requested;

(ii) Granted in an extent different from that requested; or

(iii) Denied.

(2) Of the reasons for any recommended action adverse to or different from the waiver of rights requested by the petitioner.

(b) *Request for reconsideration and statements required.* (1) If, under paragraph (a) of this section, the Board notifies the petitioner that the Board proposes to recommend action adverse to or different from the waiver requested, the petitioner may, within the period as the Board may set, but not less than 15 days from the notification, request reconsideration by the Board.

(2) If reconsideration has been requested within the prescribed time, the petitioner shall, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file its statement setting forth the points, authorities, arguments, and any additional material on which it relies.

(3) Upon filing of the reconsideration statement by the petitioner, the petition will be assigned for reconsideration by the Board upon the contents of the petition, the record, and the reconsideration statement submitted by the petitioner.

(4) The Board, after its reconsideration, will promptly notify the petitioner of its proposed recommendation to the Administrator. If the Board's proposed action is adverse to, or different from, the waiver requested, the petitioner may request an oral hearing within the time as the Board has set.

### § 1245.113 Hearing procedure.

(a) If the petitioner requests an oral hearing within the time set, under § 1245.112(b)(4), the Board shall set the time and place for the hearing and shall notify the petitioner.

(b) Oral hearings held by the Board shall be open to the public and shall be held in accordance with the following procedures:

(1) Oral hearings shall be conducted in an informal manner, with the objective of providing the petitioner with a

full opportunity to present facts and arguments in support of the petition. Evidence may be presented through means of witnesses, exhibits, and visual aids as are arranged for by the petitioner. Petitioner may be represented by any person including its attorney. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the petitioner, and the Board may, at its option, enlist the aid of technical advisors or expert witnesses. Any person present at the hearing may make a statement for the record.

(2) A transcript or equivalent record of the proceeding shall be arranged for by the Board. The petitioner shall submit for the record a copy of any exhibit or visual aid utilized during the hearing.

**§1245.114 Findings and recommendations of the Board.**

(a) *Findings of the Board.* The Board shall consider the petition, the NASA contract, if relevant, the goals cited in §1245.103(a), the effect of the waiver on the objectives of the related NASA programs, and any other available facts and information presented to the Board by an interested party. The Board shall document its findings.

(b) *Recommendation of the Board.* (1) Except as provided in §1245.104(d), after making the findings of fact, the Board shall formulate its proposed recommendation to the Administrator as to the grant of waiver as requested, the grant of waiver upon terms other than as requested, or denial of waiver.

(2) If the Board proposes to recommend, initially or upon reconsideration or after oral hearing, that the petition be granted in the extent requested or, in other cases, where the petitioner does not request reconsideration or a hearing during the period set for the action or informs the Board that the action will not be requested, or fails to file the required statements within the prescribed time, the Board shall transmit the petition, a summary record of hearing proceedings, if applicable, its findings of fact, and its recommendation to the Administrator.

**§1245.115 Action by the Administrator.**

(a) After receiving the transmittal from the Board, the Administrator shall determine, in accordance with the policy of §1245.103, whether or not to grant any petition for waiver of rights to the petitioner.

(b) In the event of denial of the petition by the Administrator, a written notice of such denial will be promptly transmitted by the Board to the petitioner. The written notice will be accompanied with a statement of the grounds for denial.

(c) If the waiver is granted by the Administrator, the petitioner shall be sent for execution, an instrument of waiver confirmatory of the conditions and reservations of the waiver grant. The petitioner shall promptly return the executed copy of the instrument of waiver to the Chairperson.

**§1245.116 Miscellaneous provisions.**

(a) *Filing of patent applications and reimbursement of costs.* In order to protect the interests of the Government and the petitioner in inventions, a petitioner may file United States patent applications for such inventions prior to the Administrator's determination on a petition for waiver. If an application on an identified invention is filed during the pendency of the petition, or within 60 days prior to the receipt of a petition, NASA will reimburse the petitioner for any reasonable costs of the filing and patent prosecution that may have occurred, *provided:*

(1) Similar patent filing and prosecution costs are not normally reimbursed to the petitioner as direct or indirect costs chargeable to the Government contracts;

(2) The petition is ultimately denied with respect to domestic rights, or with respect to foreign and domestic rights, if both are requested, and

(3) Prior to reimbursement, petitioner assigns the application to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(b) *Statement of Government rights.* The waiver recipient shall include, within the specification of any United

States patent application and any patent issuing thereon for a waived invention, the following statement:

The invention described herein was made in the performance of work under NASA Contract No. _____, and is subject to the provisions of Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457).

(c) *License to the Government.* The waiver recipient shall return to NASA a duly executed and approved license to the Government (which will be prepared by the Government) fully confirming of all the rights, domestic and foreign, to which the Government is entitled.

(d) *Patent filing and issuance information.* The waiver recipient shall furnish to either the Chairperson or the patent representative, the filing date, serial number and title, and upon request, a copy of any domestic or foreign patent application including an English language version if filed in a language other than English, and a copy of the patent or patent number and issue date, for any waived invention.

(e) *Transfer of rights.* The waiver recipient shall notify the Chairperson prior to any transfer of principal rights in any waived invention to any party. Such transfer shall be subject to all rights reserved by the Government, and all obligations of the waiver recipient, as set forth in this subpart.

(f) *Utilization reports.* (1) The waiver recipient shall provide to the Chairperson upon request, and no more frequently than annually, reports on the utilization of a waived invention or on efforts at obtaining such utilization being made by the waiver recipient or its licensees or assigns. Such reports shall include information regarding the status of the development, date of first commercial sale or use, and such other data and information as the Chairperson may reasonably specify. No utilization reports need be submitted after the term of the patent.

(2) Such reports on the utilization of a waived invention, as well as information on the utilization or efforts at obtaining utilization obtained as part of a march-in proceeding under § 1245.117, shall be treated by NASA as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under 5 U.S.C. 552.

(g) *Communications.* Unless otherwise specifically set forth in this subpart, all communications relating to waived inventions, and all information and documents required to be submitted to NASA in this subpart, shall be furnished to the patent representative designated in the contract under which the waived invention was made.

(Recordkeeping and reporting requirements contained in paragraph (f) were approved by the Office of Management and Budget under control number 2700–0050)

### § 1245.117 March-in and waiver revocation procedures.

(a) The exercise of march-in procedures shall be governed by 35 U.S.C. 203 and by the applicable provisions of 37 CFR 401.6, entitled ''Exercise of march-in rights for inventions made by nonprofit organizations and small business firms.''

(b) Whenever NASA receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify the waiver recipient in writing of the information and request informal written or oral comments from the waiver recipient as well as information relevant to the matter. In the absence of any comments from the waiver recipient within 30 days, NASA may, at its discretion, proceed with the procedures set forth in 37 CFR 401.6. If a comment is received within 30 days, or later if NASA has not initiated the procedures, then NASA shall, within 60 days after it receives the comment, either initiate the procedures or notify the waiver recipient, in writing, that it will not pursue march-in rights on the basis of the available information.

(c) If march-in procedures are to be initiated, the Administrator of NASA, or designee, shall undertake or refer the matter for fact finding to the NASA Board of Contract Appeals (BCA) and its Chairperson.

(d) Fact-finding shall be conducted by the NASA BCA and its Chairperson in accordance with its procedures that are consistent with the procedures set forth in 37 CFR 401.6. Any portion of the march-in proceeding, including a

fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the waiver recipient, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), NASA shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the waiver recipient (assignee or licensee).

(e) The preparation of written findings of fact and recommended determination by the Chairperson of the NASA BCA and the determination by the Administrator, or designee, of NASA shall be in accordance with 37 CFR 401.6.

(f) NASA may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

### §1245.118 Record of decisions.

The findings of fact and recommendations made to the Administrator by the Board with respect to each petition for waiver shall be recorded by the Board and be available to the public.

## Subpart 2 [Reserved]

## Subpart 3—NASA Foreign Patent Program

AUTHORITY: 42 U.S.C. 2457(h) and Executive Orders 9865 and 10096.

SOURCE: 30 FR 1844, Feb. 10, 1965, unless otherwise noted.

### §1245.300 Scope of subpart.

This subpart establishes policy, criteria, and procedures concerning the NASA Foreign Patent Program.

### §1245.301 Inventions under NASA contracts.

(a) Pursuant to §1245.113, NASA has facilitated the filing of foreign patent applications by contractors by providing for the granting of a waiver of title to a contractor to any identified invention in countries other than the United States in the event the Administrator of NASA does not desire to file a patent application covering the invention in such countries. However, any such waiver is subject to the reservation by the Administrator of the license required to be retained by NASA under section 305(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(f)).

(b) Conversely, where the principal rights in an invention made under a NASA contract remain in the contractor by virtue of waiver, §1245.19(a)(5) provides that the contractor, upon written request, will convey to the Administrator of NASA the entire right, title, and interest in the invention in any foreign country in which the contractor has elected not to file a patent application.

(c) With respect to inventions in which NASA has acquired and retained the principal rights, NASA will file patent applications in countries other than the United States on inventions selected in accordance with the criteria set forth in §1245.303.

### §1245.302 Inventions by NASA employees.

(a) The foreign rights of NASA and of the NASA employee making an invention are determinable in accordance with Executive Orders 9865 and 10096 and Government Patent Board Administrative Order No. 6 issued pursuant thereto.

(b) Where NASA acquires an assignment of the domestic rights in an invention made by a NASA employee, NASA will also obtain an option to acquire the foreign rights, including the right to file foreign patent applications on the invention.

(c) Where NASA is entitled to only a governmental license in the invention, the principal foreign rights in the invention are retained by the employee unless he agrees in writing to assign such rights to NASA.

### §1245.303 Criteria.

The following categories of inventions will be considered for the filing of patent applications by NASA in countries other than the United States:

(a) Inventions which may be utilized abroad in governmental programs of the United States.

(b) Inventions which may be exploited abroad in the public interest by license to U.S. nationals or others.

(c) Inventions which may be utilized in applications type satellites, such as communications and meteorological satellites.

(d) Inventions considered to be basic discoveries or of major significance in an art.

(e) Inventions in fields which directly concern the public health or public welfare.

### § 1245.304 Procedures.

(a) The patent counsel at each NASA field installation will review all invention disclosures at the time of docketing and will expedite the processing and preparation of a U.S. patent application, if justified, on those inventions which appear to fall within the criteria set forth in § 1245.303. The patent counsel will make a recommendation as to whether or not foreign patent coverage appears justified at the time of assigning a priority evaluation to a disclosed invention.

(b) Preparation and filing of patent applications in foreign countries will be subject to approval of the Assistant General Counsel for Patent Matters, NASA Headquarters.

(c) The Office of Assistant General Counsel for Patent Matters will budget for and administer the filing of all patent applications in countries other than the United States.

(d) Coordination with other interested NASA offices will be undertaken by the Assistant General Counsel for Patent Matters.

## Subpart 4—Foreign Patent Licensing Regulations

AUTHORITY: 42 U.S.C. 2457(g) and (h).

SOURCE: 31 FR 10958, Aug. 18, 1966, unless otherwise noted.

### § 1245.400 Scope of subpart.

(a) The subpart establishes the policy, terms, conditions, and procedures under which NASA-owned foreign patents and patent applications may be licensed.

(b) The provisions of this subpart apply to all NASA-owned patents granted in countries other than the United States and to NASA-owned patent applications pending in such countries and supplement the provisions of subpart 2 of this part for foreign patent licensing.

### § 1245.401 Policy.

The foreign licensing program of the National Aeronautics and Space Administration serves to promote and utilize foreign patent rights vested in the Administration. The objectives of this program are to further the interests of United States industry in foreign commerce, to enhance the economic interests of the United States and to advance the international relationships of the United States.

### § 1245.402 Types of licenses and terms and conditions.

Licenses will be individually negotiated and may be granted to any applicant, foreign or domestic, on a nonexclusive or exclusive basis for royalties or other considerations and on such other terms and conditions as are deemed appropriate to the interests of the United States. Preference in the granting of foreign license rights will be shown to those applicants who have previously been granted a license under the corresponding U.S. patent or patent application.

### § 1245.403 Government license.

There will be reserved from each exclusive license an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government pursuant to any existing or future treaty or agreement with the United States.

### § 1245.404 Enforcement of patent rights.

An exclusive licensee will be authorized to enforce the licensed patent and to sue infringers of the patent at its own expense.

### § 1245.405 Procedures.

(a) NASA will publish in the United States, and elsewhere as may be appropriate, lists of NASA-owned foreign

patents or patent applications available for licensing.

(b) NASA will also furnish written notice of the availability for licensing of NASA-owned foreign patents or patent applications to any licensee under the corresponding U.S. patent or patent application.

(c) Applications for license should be addressed to the Administrator, National Aeronautics and Space Administration, Washington, DC 20456. The application must fully identify the patent or patent application, and state the type of license requested together with proposed terms and conditions thereof.

(d) The conduct of negotiations with prospective licensees will be the responsibility of the General Counsel, NASA. In the conduct of such negotiations, due regard shall be had for the possible interests of NASA program and staff offices, and their coordination will be obtained as deemed appropriate.

(e) NASA will publish notice in the FEDERAL REGISTER, and elsewhere as may be appropriate, of its intention to grant an exclusive license under an identified patent or patent application. An exclusive license will not be granted until the expiration of 60 days from the date of notice in order to provide a suitable time interval for interested persons or other Government agencies to interpose comment or objection.

(f) All licenses shall become effective upon the written acceptance by the licensee of a license instrument specifying the type of license and terms and conditions thereof.

## Subpart 5—Authority and Delegations to Take Certain Actions Relating to Patents and Other Intellectual Property Rights

AUTHORITY: 42 U.S.C. 2473, 2457; 14 CFR 1204.506.

SOURCE: 43 FR 34122, Aug. 3, 1978, unless otherwise noted.

### §1245.500 Scope.

This subpart 5 sets forth the authority and delegations relating to intellectual property rights, and the administration of the NASA patent program.

### §1245.501 General Counsel.

The General Counsel administers the NASA patent program and is delegated authority to take the following specific actions related to intellectual property, including patent, copyright, trademark, and related matters:

(a) *Determination of rights.* (1) To execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950, as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the adminstrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, ''Administration of a Uniform Patent Policy With Respect to the Domestic Rights in Inventions Made by Government Employees'';

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way of either title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of, and other rights in inventions, patents, and applications for patents;

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.;

(f) *Certifications.* To exercise the authority of the Administrator with respect to certifications in support of requests for extensions of time under 35 U.S.C. 267;

(g) *Foreign patent program.* To exercise the authority of the Administrator in taking all necessary action to obtain and maintain patents in foreign countries, including the execution of instruments necessary for filing, prosecution, and maintenance of foreign applications and patents;

(h) *Authority under section 305(d) and (e).* To represent the Administrator and to appoint attorneys to represent the Administrator in the conduct of business under sections 305(d) and (e) of the National Aeronautics and Space Act of 1958, as amended, including execution of requests pursuant to said sections of the act that patents be issued to the Administrator on behalf of the United States or that title be transferred to the Administrator;

(i) *Acquisition authority.* To exercise the power conferred on the Administrator by the National Aeronautics and Space Act of 1958, as amended, to acquire an interest in patents and patent applications, including the purchase of such interests in settlement of claims for the unauthorized use of patented inventions and to acquire interests in copyrights, trademarks, and trade names;

(j) *Authority to settle copyright claims.* To exercise all powers conferred on the Administrator by 28 U.S.C. 1498(b), including the settlement of claims for copyright infringement;

(k) *Granting of licenses.* To make the determinations and to take any and all actions with respect to the licensing of NASA inventions vested in the Administrator by the NASA Domestic Patent Licensing Regulations, 14 CFR subpart 1245.2 (NASA Management Instruction 5109.3) and the NASA Foreign Patent Licensing Regulations, 14 CFR subpart 1245.4 (NASA Management Instruction 5109.5) to sign all FEDERAL REGISTER notice material required by the patent licensing regulations and to otherwise grant licenses on any invention in which the Administrator has reserved the right to grant licenses; and

(l) *Waiver determinations and instruments.* To sign for the Administrator attestations of determinations of grant or denial of waiver of title to inventions and to execute instruments of waiver, when in accordance with the recommendations of the Inventions and Contributions Board, and the NASA Patent Waiver Regulations, 14 CFR subpart 1245.1 (NASA Management Instruction 5109.2).

### § 1245.502 Associate General Counsel for Intellectual Property.

The Associate General Counsel for Intellectual Property provides functional direction to all Patent Counsel and is redelegated the authority to take the following actions:

(a) *Rights determinations.* (1) To execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950 as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, ''Administration of a Uniform Patent Policy With Respect to the Domestic Rights in Inventions Made by Government Employees'';

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way either of title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept, on behalf of the United States, licenses under, assignments of, and other rights in inventions, patents, and applications for patents; and

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.

[43 FR 34122, Aug. 3, 1978, as amended at 56 FR 19797, Apr. 30, 1991]

### §1245.503 Patent Counsel of Field Installations.

Patent Counsel of Field Installations and Patent Counsel, NASA Resident Legal Office, Pasadena, Calif., are redelegated authority to take the following actions:

(a) *Rights determination.* To make determination, under Executive Order 10096 of January 23, 1950, as amended, or the respective rights of the Government and of the inventor in and to inventions made by employee under the administrative jurisdiction of their installations in those instances where the Government is entitled to obtain the entire right, title, and interest, and to make each determination, with the concurrence of the Associate General Counsel for Intellectual Property, in those instances where the Government acquires less than the entire domestic right, title, and interest.

(b) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of and other rights in inventions, patents, and applications for patents.

[43 FR 34122, Aug. 3, 1978, as amended at 56 FR 19797, Apr. 30, 1991]

### §1245.504 Further redelegation.

None authorized except by virtue of succession.

## PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

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APPENDIX A TO PART 1250—NASA FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

AUTHORITY: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d–1; and the laws listed in appendix A to this part.

SOURCE: 30 FR 301, Jan. 9, 1965, unless otherwise noted.

### §1250.100 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as ''the Act'') to the end that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Aeronautics and Space Administration, hereinafter referred to as NASA.

### §1250.101 Applicability.

(a) *Covered programs.* (1) This part applies to any program for which Federal financial assistance is authorized under a law administered by NASA, including the federally-assisted programs and activities listed in appendix A to this part. The fact that a program or activity is not listed in appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to appendix A by notice published in the FEDERAL REGISTER.

(2) This part applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date.

(b) *Excluded activities.* This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance

extended under any such program before the effective date of this part, except as provided in paragraph (a) of this section, (3) any assistance to any individual who is the ultimate beneficiary under any such program, (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as provided in § 1250.103–3, (5) contracts not covered in the programs listed in appendix A, or (6) advances, V-loans, and other financial assistance made incident to NASA procurements not covered in the programs listed in appendix A.

**§ 1250.102 Definitions.**

As used in this part—

(a) *Administrator* means the Administrator of the NASA.

(b) *Applicable* means one who submits an application, request, proposal, or plan required to be approved by a responsible NASA official, or by a primary recipient, as a condition to eligibility for Federal financial assistance; and the term *application* means such an application, request, proposal or plan.

(c) *Facility* includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(d) *Federal financial assistance* includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) *NASA* means the National Aeronautics and Space Administration.

(f) *Primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) *Principal Compliance Officer* means the Director, Equal Employment Opportunity Office, Office of Organization and Management, NASA Headquarters, or any successor officer to whom the Administrator should delegate authority to perform the functions assigned to the Principal Compliance Officer by this part.

(h) *Program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training) whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(i) *Recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) *Responsible NASA official* means:

(1) The heads of Offices at NASA Headquarters responsible for making

grants, and contracts of the kind listed in appendix A; and

(2) Each Director of a field installation which makes or administers grants and contracts of the kind listed in appendix A, or any officer to whom he has delegated authority to act within the areas of responsibility assigned to him under this part.

(k) *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term *State* means any one of the foregoing.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

### §1250.103 Discrimination prohibited.

#### §1250.103–1 General.

No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

#### §1250.103–2 Specific discriminatory acts prohibited.

(a) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(5) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(6) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(7) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in §1250.103–3).

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(e) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in § 1250.103–1. This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

### § 1250.103–3 Employment practices.

(a) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (1) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (2) to provide work experience which contributes to the education or training of such individuals.

(b) Employment opportunities provided in connection with any of the programs listed in appendix A, which opportunities are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments, are programs of the kind described in paragraph (a)(1) and (2) of this section.

(c) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any Executive order which supersedes it.

(d) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

### § 1250.103–4 Illustrative applications.

(a) In training grant programs discrimination is forbidden in the selection or eligibility of individuals to be trained and in their treatment by the grantee during their training. In any case where selection is made from a predetermined group, such as the students in an institution, the group must have been selected without discrimination.

(b) In a research or training grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited and the prohibition extends to the entire university unless it satisfies the responsible NASA official that practices with respect to other parts or programs of the university will not

interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(c) Discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(d) In a research or training grant, discrimination is prohibited with respect to the availability of any educational activity and any provision of medical or other services and any financial aid to individuals incident to the grant.

(e) Upon transfers of real or personal property for research or educational uses, discrimination is forbidden to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under §1250.105 to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

### §1250.103–5 Special programs.

An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

### §1250.103–6 Medical emergencies.

Notwithstanding the provisions of §§1250.103 to 1250.103–5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with §1250.103–1, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with §1250.103–1.

### §1250.104 Assurances.

(a) *General requirement.* Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain, be accompanied by, or identify and make reference to, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. If the assurance is not made a part of the application, the application shall identify the assurance which is applicable to the application. One assurance shall suffice for all applications of an applicant if the assurance complies with the conditions made applicable by this part to each such application for Federal financial assistance.

Every assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Duration of assurances.* The period of time to be covered by the assurances required under this § 1250.104 shall be as follows:

(1) *Real property*. In the case of an application for Federal financial assistance for providing real property or structures thereon, the assurance shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) *Personal property*. In the case of an application for Federal financial assistance for providing personal property, the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property.

(3) *Other kinds of Federal financial assistance.* In the case of an application for any other kind of Federal financial assistance, the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application.

(c) *Assurances for research, training, or educational programs.* (1) In the case of application by an institution of higher education or any other organization for Federal financial assistance for a program or activity which involves participation by students, fellows or trainees, including but not limited to assistance for research, training, or the provision of facilities, the assurance required by this § 1250.104 shall extend to admission practices and to all other practices relating to the treatment of students or other participants.

(2) The assurances from such an applicant shall be applicable to the entire organization of the applicant unless the applicant establishes, to the satisfaction of the officer administering the program or activity involved, that its practices in designated parts or programs of the organization of the applicant will in no way affect its practices in the program of the applicant for which Federal financial assistance is sought, or the beneficiaries of or participants in such program.

(d) *Assurances for construction of facilities.* (1) In the case of assistance for the construction of a facility, or part thereof, the assurance shall extend to the entire facility and to facilities operated in connection therewith. In grants to assist in the construction of facilities for the provision of research, training, or educational services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be forbidden as a condition of grants for the support of such services. Thus, as a condition of grants for the construction of academic, research or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. Also, see paragraph (c) of this section for the requirement as to the applicability of the assurance to the applicant's organization.

(2) In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(e) *Instrument effecting or recording transfers of real property*. The instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible NASA official, such a condition and right of reverter is appropriate to

the program under which the real property is obtained and to the nature of the grant and the grantee.

(f) *Assurances for transfer of surplus real property.* Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(g) *Form of assurances.* The responsible NASA officials shall specify the form of assurances required by this §1250.104 and the extent to which like assurances will be required by subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(h) *Requests for proposals.* Any request for proposals issued by NASA which relates to covered financial assistance listed in appendix A shall have set forth therein or have attached thereto the assurance prescribed in accordance with paragraph (g) of this section, and shall require that the proposer either include the assurance as a part of his signed proposal or identify and refer to an assurance already signed and submitted by the proposer.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

### §1250.105 Compliance information.

(a) *Cooperation and assistance.* Each responsible NASA official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Principal Compliance Officer or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Principal Compliance Officer or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Principal Compliance Officer or his designee during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Principal Compliance Officer finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this part.

### §1250.106 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible NASA official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Principal Compliance Officer or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Principal Compliance Officer or his designee.

(c) *Investigations.* The Principal Compliance Officer or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with

this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Principal Compliance Officer or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1250.107.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible NASA official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

**§ 1250.107 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1250.104.* If an applicant fails or refuses to furnish an assurance required under § 1250.104 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. NASA shall not be obligated to provide assistance in such a case during the pendency of the administrative proceedings under such subsection except that NASA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible NASA official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Administrator pursuant to § 1250.109(e), and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a

finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Principal Compliance Officer has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

**§1250.108 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §1250.107(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Principal Compliance Officer that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §1250.107(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at NASA Headquarters in Washington, DC, at a time fixed by the Principal Compliance Officer unless he determines that the convenience of the applicant or recipient or of NASA requires that another place be selected. Hearings shall be held before the Administrator, or, at his discretion, before a hearing examiner designated in conformity with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and NASA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (section 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both NASA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side

of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or non-compliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with the part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1250.109.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

**§ 1250.109 Decisions and notices.**

(a) *Decision by person other than the NASA Principal Compliance Officer.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Principal Compliance Officer for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the Principal Compliance Officer his exceptions to the initial decision with his reasons therefor. In the absence of exceptions, the Principal Compliance Officer may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Principal Compliance Officer shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Principal Compliance Officer.

(b) *Decisions on record or review by the NASA Principal Compliance Officer.* Whenever a record is certified to the Principal Compliance Officer for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Administrator conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Principal Compliance Officer shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1250.108, a decision shall be made by the Principal Compliance Officer on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Principal Compliance Officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by administrator.* Any final decision of the NASA Principal Compliance Officer which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part including provisions designed to assure that no Federal financial assistance

will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its non-compliance and satisfies the Principal Compliance Officer that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Principal Compliance Officer to restore fully the eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Principal Compliance Officer determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Principal Compliance Officer denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Principal Compliance Officer. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

### §1250.110 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

### §1250.111 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of NASA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this Instruction. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11246 and regulations or instructions issued thereunder, or (2) any other regulations or instructions, insofar as such other regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible NASA official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to financial assistance to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of

the Act and this part (other than responsibility for final decision as provided in § 1250.109), including the achievement of effective coordination and maximum uniformity within NASA and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action has been taken by the responsible official of this agency.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

### § 1250.112 Relationship with other officials.

NASA officials, in performing the functions assigned to them by this part, are responsible for recognizing the delegations of authority and responsibility of other NASA officials and for seeing the actions taken or instructions issued by them are properly coordinated with the offices and divisions having joint interests.

### APPENDIX A TO PART 1250—NASA FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Grants made under the authority of Pub. L. 85–934, approved September 6, 1958 (42 U.S.C. 1891–1893).

2. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of section 2 of Pub. L. 85–934, approved September 6, 1938 (42 U.S.C. 1892).

3. Training grants made under the authority of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451–2460, 2472–2473).

4. Facilities grants made under authority in annual NASA authorization and appropriation acts.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

# PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 26862, July 28, 1986, unless otherwise noted.

## Subpart 1251.1—General Provisions

### §1251.100 Purpose.

This part effectuates section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

### §1251.101 Application.

This part applies to each recipient of Federal financial assistance from the National Aeronautics and Space Administration and to each program or activity that receives or benefits from such assistance.

### §1251.102 Definitions.

As used in this part, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 29 U.S.C. 794.

(b) *Section 504* means section 504 of the Act.

(c) *Assistant Administrator* means the Assistant Administrator for Equal Opportunity Programs for NASA.

(d) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entry, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a NASA official or by a recipient as a condition to becoming a recipient.

(f) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) *Handicapped person.*

(1) *Handicapped persons* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) *Physical or mental impairment* means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing,

hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments defined in this paragraph but is treated by a recipient as having such an impairment.

(i) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

### § 1251.103 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefits, or services, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped persons and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Recipients shall take appropriate steps to ensure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Federal financial assistance because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(4) Despite the existence of separate or different programs or activities provided in accordance with this part, a

recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(5) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination of the basis of handicap;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(6) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(7) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(8) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute of Executive order to handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

**§1251.104 Assurances required.**

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Administrator, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to NASA.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(3) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the covenant shall also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on the property for the purposes for which the property was transferred, the Assistant Administrator may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

### § 1251.105 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Administrator finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Administrator deems necessary to overcome the effects to the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Administrator, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Administrator may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred; or

(ii) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred; or

(iii) With respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within 1 year of the effective date of this part; or within 1 year of first becoming a recipient:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs 15 or more persons shall, for at least 3 years, follow completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Administrator upon request:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

### § 1251.106 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not to be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

**§1251.107 Notice.**

(a) A recipient that employs 15 or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to §1251.106(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this section and this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

**§1251.108 Administrative requirements for small recipients.**

The Assistant Administrator may require any recipient with fewer than 15 employees, or any class of such recipients, to comply with §§1251.106 and 1251.107, in whole or in part, when the Assistant Administrator finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

**§1251.109 Effect of State or local law or other requirements and effect of employment opportunities.**

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

## Subpart 1251.2—Employment Practices

**§1251.200 Discrimination prohibited.**

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under the Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

### § 1251.201 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

### § 1251.202 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is

shown to be job-related for the position in question; and

(2) Alternative job-related tests of criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Administrator to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

### §1251.203 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §1251.105(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity pursuant to §1251.105(b), or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary of affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

## Subpart 1251.3—Program Accessibility

### §1251.300 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

### §1251.301 Existing facilities.

(a) *Program accessibility*. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its

entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aides to beneficiaries; home visits; delivery of health, welfare, or other social services at alternate accessible sites; alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1251.302; or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with inpaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

**§ 1251.302 New construction.**

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction (ground breaking) was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or

greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[51 FR 26862, July 28, 1986, as amended at 55 FR 52138, 52140, Dec. 19, 1990]

## Subpart 1251.4—Procedures

### §1251.400 Procedures for compliance.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§1250.106, 1250.108 and 1250.110 of this chapter.

## Subpart 1251.5—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Aeronautics and Space Administration

SOURCE: 53 FR 25882 and 25885, July 8, 1988, unless otherwise noted.

### §1251.501 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### §1251.502 Application.

This regulation (§§1251.501–1251.570) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

### §1251.503 Definitions.

For purposes of this regulation, the term—

*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

*Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits

one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

*Qualified individual with handicaps* means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 1251.540.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

*Substantial impairment* means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

### §§ 1251.504–1251.509 [Reserved]

### § 1251.510 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies

and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

### §1251.511 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

### §§1251.512–1251.529 [Reserved]

### §1251.530 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use

criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

### §§ 1251.531–1251.539 [Reserved]

### § 1251.540 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

### § 1251.541–1251.548 [Reserved]

### § 1251.549 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1251.550, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

### § 1251.550 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1251.550(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate

accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of §1251.550(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §1251.550(a)(2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

### §1251.551 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

### §§1251.552–1251.559 [Reserved]

### §1251.560 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1251.560 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§ 1251.561–1251.569 [Reserved]**

**§ 1251.570 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant Administrator for Equal Opportunity Programs shall be responsible for coordinating implementation of this section. Complaints may be sent to the Office of Equal Opportunity Programs, Room 6119, 400 Maryland Avenue, SW., Washington, DC 20546.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1251.570(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25882 and 25885, July 8, 1989]

**§§1251.571–1251.999 [Reserved]**

# PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

### Subpart 1252.1—General

Sec.

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1252.201 Exceptions to the rules against age discrimination.
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### Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

1252.400 Compliance reviews.
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1252.405 Compliance procedure.
1252.406 Hearings.
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1252.408 Remedial action by recipients.
1252.409 Alternate funds disbursal procedure.
1252.410 Exhaustion of administrative remedies.
1252.411 Age distinctions.

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR part 90).

SOURCE: 50 FR 13311, Apr. 4, 1985, unless otherwise noted.

## Subpart 1252.1—General

### §1252.100 What is the purpose of NASA's age discrimination regulations?

The purpose of these regulations is to set out NASA's policies and to implement agencywide or agency procedures under the Age Discrimination Act of 1975 according to the government-wide age discrimination regulations at 45 CFR part 90. (Published at 44 FR 33768, June 12, 1979.) The Act and the government-wide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs and activities and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and the governmentwide regulations.

### § 1252.102 To what programs do these regulations apply?

(a) These regulations apply to each NASA recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by NASA.

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 *et seq.*).

### § 1252.103 Definitions.

As used in these regulations, the term:

(a) *Act* means the Age Discrimination Act of 1975, as amended. (Title III of Pub. L. 94–135.)

(b) *Action* means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) *Age distinction* means any action using age or an age-related term.

(e) *Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, ''children,'' ''adult,'' ''older persons,'' but not ''student'').

(f) *Discrimination* means unlawful treatment based on age.

(g) *NASA* means the National Aeronautics and Space Administration.

(h) *Federal financial assistance* means any grant, entitlement, loan, cooperative agreement contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or interest in or use of property, including:

(i) Transfer or lease of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) *FMCS* means the Federal Mediation and Conciliation Service.

(j) *Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) *Administrator* means the Administrator of the National Aeronautics and Space Administration or designee.

(l) *Subrecipient* means any of the entities in the definition of ''recipient'' to which a recipient extents or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

## Subpart 1252.2—Standards for Determining Age Discrimination

### § 1252.200 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1252.201.

(a) *General rule:* No person in the United States shall, on the basis of age

be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

### §1252.201 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms *normal operation* and *statutory objective* shall have the following meaning:

(1) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, state statute or local statute or ordinance adopted by any elected, general purpose legislative body.

(b) Normal operation or statutory objective of any program or activity. A recipient is permitted to take an action otherwise prohibited by §1252.200 if the action reasonably takes into account age as a factor necessary to the normal operation of the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure of approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by §1252.200 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

### §1252.202 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §1252.201 (b) and (c) is on the recipient of Federal financial assistance.

### §1252.203 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provision of §1252.10.

## Subpart 1252.3—Responsibilities of Recipients

### §1252.300 General responsibilities of recipients.

Each NASA recipient must ensure that its programs and activities comply with these regulations.

### §1252.301 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from NASA to subrecipients, the recipient shall provide the subrecipient written notice of their obligations under these regulations.

### § 1252.302 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from NASA shall sign a written assurance as specified by NASA that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41, NASA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from NASA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the NASA regulations, the recipient shall take corrective action.

### § 1252.303 Information requirements.

(a) Keep records in a form that contains information which NASA determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to NASA, upon request, information and reports which NASA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by NASA to the books, records, accounts, and other recipient facilities and sources of information to the extent NASA determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

## Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

### § 1252.400 Compliance reviews.

(a) NASA may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. NASA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, NASA will attempt to secure the recipient's voluntary compliance with the Act. If voluntary compliance cannot be achieved, NASA will arrange for enforcement as described in § 1252.405.

### § 1252.401 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NASA, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NASA may extend this time limit.

(b) NASA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement, which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and assigned by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact NASA for information and assistance regarding the complaint resolution process.

(c) NASA will return to the complainant any complaint outside the jurisdiction of these regulations, and will

state the reason(s) why it is outside the jurisdiction of these regulations.

**§1252.402 Mediation.**

(a) Referral of complaints for mediation. NASA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before NASA will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NASA. NASA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement. However, NASA retains the right to monitor the recipient's compliance with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) NASA will use the mediation process for a maximum of 60 days after receiving a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time NASA receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to NASA.

**§1252.403 Investigation.**

(a) *Informal inquiry*. (1) NASA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial inquiry, NASA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. NASA may seek the assistance of any involved State program agency.

(3) NASA will put any agreement in writing and have it signed by the parties and an authorized official at NASA.

(4) The settlement shall not affect the operation of any other enforcement effort of NASA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation*. If NASA cannot resolve the complaint through informal means it will develop formal findings through further investigations of the complaint. If the investigation indicates a violation of these regulations, NASA will attempt to obtain voluntary compliance. If NASA cannot obtain voluntary compliance, it will begin enforcement as described in §1252.405.

**§1252.404 Prohibition against intimidation or retaliation.**

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of NASA's investigation, conciliation, and enforcement process.

**§1252.405 Compliance procedure.**

(a) NASA may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from NASA under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from NASA.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NASA will limit any termination under § 1252.405(a)(1) to the particular program activity NASA finds in violations of these regulations. NASA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from NASA.

(c) NASA will take no action under paragraph (a) until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a) of this section.

(d) NASA also may defer granting new Federal financial assistance from NASA to a recipient when a hearing under § 1252.405(a)(1) is initiated.

(1) New Federal financial assistance from NASA includes all assistance for which NASA requires an application or approval, including renewal or continuation of existing activities during the deferral period. New Federal financial assistance from NASA does not include assistance approved prior to the beginning of a hearing under § 1252.405(a)(1).

(2) NASA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 1252.405(a)(1). NASA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Administrator. NASA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

### § 1252.406 Hearings.

The procedural provisions for those hearings required by § 1252.405 are contained in 14 CFR 1250.108.

### § 1252.407 Notices, decisions, and post-termination proceedings.

All notices, decisions, and post-termination proceedings, insofar as NASA is concerned, shall be made in accordance with 14 CFR 1250.109.

### § 1252.408 Remedial action by recipients.

(a) Where NASA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NASA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NASA may require both recipients to take remedial action.

(b) Even in the absence of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipients program or activity on the basis of age.

### § 1252.409 Alternate funds disbursal procedure.

(a) When NASA withholds funds from a recipient under these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

### § 1252.410 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and NASA has made no finding with regard to the complaint; or

(2) NASA issues any findings in favor of the recipient.

(b) If NASA fails to make a finding within 180 days or issues a finding in favor of the recipient, NASA will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint.

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and

(iv) That the notice must state: the alleged violation of the act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

### § 1252.411 Age distinctions.

There are no Federal statutes or regulations containing age distinctions which affect financial assistance administered by the agency.

## PART 1259—NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM

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AUTHORITY: Pub. L. 100–147, 101 Stat. 869–875, 42 U.S.C. 2486; 42 U.S.C. 2452.

SOURCE: 54 FR 19880, May 9, 1989, unless otherwise noted.

## Subpart 1—Basic Policy

### § 1259.100 Scope of part.

(a) This part 1259 establishes the policies, responsibilities and procedures relative to the National Space Grant College and Fellowship Program established by Title II of the National Aeronautics and Space Administration Authorization Act of 1988 (Pub. L. 100–147, Oct. 30, 1987, 101 Stat. 869–875, 42 U.S.C. 2486). This statute authorizes the Administrator of the National Aeronautics and Space Administration (NASA), in order to carry out the purposes of the National Space Grant College and Fellowship Act (the Act), to accept conditional or unconditional gifts and donations, to accept and use funds from other Federal departments, agencies and instrumentalities, to make awards with respect to such needs or problems and to designate Space Grant colleges. It further directs the Administrator to establish a graduate fellowship program to provide educational assistance to qualified individuals in fields related to space, and to establish an independent committee known as the Space Grant Review Panel to review and advise the Administrator with respect to Space Grant programs.

(b) The regulations of this part do not apply to awards made by NASA under any other authority.

### § 1259.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Field related to space* means any academic discipline or field of study (including the physical, natural and biological sciences, and engineering, space technology, education, economics, sociology, communications, planning, law, international affairs and public administration) which is concerned with or likely to improve the understanding, assessment, development and utilization of space.

(b) *Institution of higher education* means any college or university in any State which:

(1) Admits as regular students only individuals who have a certificate of graduation or equivalent from a secondary school;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(c) *National of the United States* means a citizen of the United States or a native resident of a possession of the United States. It does not refer to or include a citizen of another country who has applied for United States citizenship.

(d) *Panel* means the Space Grant Review Panel established pursuant to section 210 of the Act.

(e) *Person* means any individual, public or private corporation, partnership or other association or entity (including any Space Grant college, Space Grant consortium, institution of higher education, institute or laboratory), or any State, political subdivision thereof, or agency or officer of a State or political subdivision thereof.

(f) *Space* means *aeronautical and space activities* which has the meaning given to such term in section 103(1) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2452).

(g) *Space Grant college* means any public or private institution of higher education which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(h) *Space Grant regional consortium* means any association or other alliance which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(i) *Space Grant program* means any program which:

(1) Is administered by any Space Grant college, Space Grant regional consortium, institution of higher education, institute, laboratory or State or local agency; and

(2) Includes two or more projects involving education and one or more of the following activities in the fields related to space:

(i) Research;

(ii) Training; or

(iii) Advisory services.

(j) *Space Grant program award* means any award contemplated under section 206(a) of the Act.

(k) *Special Space Grant program award* means any award extended under section 206(b) of the Act.

(l) *Specific national need grant* means any award extended under section 207 of the Act.

(m) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and any other territory or possession of the United States.

(n) *State Space Grant cooperating institution* means any institution of higher education in a State which does not have a designated Space Grant college that is named by the Administrator or designee to provide selected Space Grant program functions within that State.

### §1259.102 General policy.

(a) In accordance with subsections 103(a)(2) and (3) of the National Aeronautics and Space Act of 1958, as amended, (42 U.S.C. 2457(a)(3)), it is NASA's policy, through various educational programs, to provide direct support for and encouragement to teachers, students and prospective students in fields related to space.

(b) In compliance with the National Space Grant College and Fellowship Act (42 U.S.C. 2486), it shall be NASA's purpose to:

(1) Increase the understanding, assessment, development and utilization of space resources by promoting a strong educational base, responsive research and training activities and broad and prompt dissemination of knowledge and techniques;

(2) Utilize the abilities and talents of the universities of the Nation to support and contribute to the exploration and development of the resources and opportunities afforded by the space environment;

(3) Encourage and support the existence of interdisciplinary and multidisciplinary programs of space research, to engage in activities of training (including teacher education), research and public service and to have cooperative programs with industry;

(4) Encourage and support the existence of consortia, composed of university and industry members, to advance the exploration and development of space resources in cases in which national objectives can be better fulfilled than through the programs of single universities;

(5) Encourage and support Federal funding for graduate fellowships in fields related to space;

(6) Support activities in colleges and universities generally for the purpose of creating and operating a network of institutional programs that will enhance achievements resulting from efforts under this Act; and

(7) Encourage cooperation and coordination among Federal agencies and Federal programs concerned with space issues.

(c) It shall be NASA's policy to designate Space Grant colleges, State Space Grant cooperating institutions and Space Grant regional consortia and award fellowships, grants, contracts and other transactions competitively in a merit-based review process.

(d) It shall be NASA's policy to designate and make awards without discriminating on the basis of sex, race, color, religion, national origin or handicap.

### §1259.103 Special authorities—gift acceptance and other Federal funding.

(a) Acceptance of gifts:

(1) In order to carry out the provisions of the Act, the Administrator is authorized to accept conditional or unconditional gifts or donations of services, money or property, real, personal or mixed, tangible or intangible. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any gift or donation that the Administrator determines is not in accord with the purposes of the program. Also, conditional gifts or donations that are not in compliance with the Act or the implementing regulations shall be declined. NASA may use a reasonable amount from a gift or donation to cover any administrative

costs associated with such gift or donation.

(b) Acceptance and use of funds from other Federal agencies:

(1) To carry out the provisions of the Act, the Administrator is authorized to accept and use funds from other Federal departments, agencies and instrumentalities to pay for awards under this program. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any such funds when the Administrator determines acceptance would not be in accord with the purposes of the program. NASA may use a reasonable amount from transferred Federal funds to cover any administrative costs associated with such transfer.

## Subpart 2—Space Grant Program and Project Awards

### § 1259.200 Description.

Awards are authorized to establish any Space Grant and/or fellowship program or project if such program or project will further the purposes of the Act.

### § 1259.201 Types of Space Grant program and project awards—regular and special.

(a) A regular Space Grant program or project award shall:

(1) Be funded by NASA up to 66 percent of the total cost of the Space Grant award and/or fellowship program involved; or

(2) Be funded up to 100 percent of its cost if funded by another Federal entity.

(b) A special Space Grant program or project award may be funded up to 100 percent of the total cost of the special project if the Administrator or designee, the Director, Educational Affairs Division, finds that:

(1) No reasonable means is available through which the applicant can meet the matching requirements for a regular Space Grant award under paragraph (a) of this section;

(2) The probable benefit of such project outweighs the public interest in such matching requirement; and

(3) The same or equivalent benefit cannot be obtained through the award of a regular Space Grant program or project award under paragraph (a) of this section or the award of a specific national need grant under section 207 of the Act.

### § 1259.202 Application procedures.

(a) The opportunity to apply shall be announced by the Director, Educational Affairs Division.

(b) The application procedures and evaluation guidelines for awards under this section will be included in the announcements of such programs.

(c) The applications will be reviewed by a peer review merit selection panel appointed by the Director, Educational Affairs Division.

### § 1259.203 Limitations.

Public Law 100–147, Section 206(d)(2) and (3), states that:

(a) Funds for awards made under this section may not be used to:

(1) Purchase land;

(2) Purchase, construct, preserve or repair any building; or

(3) Purchase or construct any launch facility or launch vehicle.

(b) Funds may be used to lease any of the items listed in paragraph (a) of this section as long as prior written approval is obtained from the Administrator or designee.

## Subpart 3—National Needs Grants

### § 1259.300 Description.

National needs awards may be awarded by the Administrator or designee to meet such needs or problems relating to aerospace identified by the Space Grant Review Panel, by NASA officials or by any person. Such awards may be up to 100 percent of the total cost of the program or project.

### § 1259.301 Identification of national needs.

National needs shall be identified by the Administrator who shall consider specific national needs and problems relating to space proposed by the Space Grant Review Panel, any NASA official or any person.

**§1259.302 Application procedures.**

(a) The Administrator or designee has the authority to make awards to meet identified national needs.

(b) The Director, Educational Affairs Division, shall establish a competitive, merit-based review process to examine unsolicited national needs proposals.

**§1259.303 Limitations.**

The same limitations shall apply as are stated in §1259.203.

## Subpart 4—Space Grant College and Consortium Designation

**§1259.400 Description.**

(a) The Administrator may designate Space Grant colleges, Space Grant college consortia and Space Grant regional consortia in order to establish Federal/university partnerships to promote a strong educational base in the space and aeronautical sciences. These designated colleges and consortia will provide leadership for a network of American colleges and universities, industry and State and local governments in space-related fields. The Administrator hereby delegates this authority to the Director, Educational Affairs Division.

(b) Designation of Space Grant colleges, Space Grant college consortia and Space Grant regional consortia shall be for 5 years. Designation of Space Grant colleges and consortia may be continued based on a merit review at the beginning of the fifth year.

(c) Each designated Space Grant college or consortium will receive:

(1) A Space Grant award that requires a 100 percent match; and

(2) Funds for fellowships.

(d) Each Space Grant college or consortium will be funded annually.

**§1259.401 Responsibilities.**

Each designated Space Grant college or consortium shall:

(a) Designate a Space Grant Program Director;

(b) Establish a Space Grant Office;

(c) Administer a fellowship program;

(d) Develop and implement programs of public service, interdisciplinary space-related programs, advisory activities and cooperation with industry, research laboratories, State and local governments and other colleges and universities, particularly institutions in their State and/or region with significantly large enrollments of racial minorities who are under-represented in science and technology; and

(e) Provide nonfederal matching funds (exclusive of in-kind contributions) for the Space Grant program equal to that provided by NASA.

**§1259.402 Basic criteria and application procedures.**

(a) Any institution of higher education may be designated a Space Grant college if the Administrator or designee finds that it has a balanced program of research, education, training and advisory services in fields related to space, as further defined in the program announcement.

(b) Any association or other alliance of two or more persons may be designated a Space Grant regional consortium, if the Administrator or designee finds that such association or alliance:

(1) Is established for the purpose of sharing expertise, research, educational or training facilities and other capabilities in order to facilitate research, education, training and advisory services, in any field related to space;

(2) Will encourage and follow a regional approach to solving problems or meeting needs relating to space, in cooperation with other institutions of higher education, Space Grant program grantees and other persons in the region.

(c) The opportunity to apply for designation shall be announced by the Director, Educational Affairs Division. The application procedures and evaluation guidelines for designation shall be included in the designation announcement.

(d) Designation will be decided by a competitive merit review of the program proposal measured against the purposes of the Act and including, but not limited to, proposed linkages with other colleges and universities (particularly institutions with significant enrollments of under-represented minority groups), public service and collaboration with space-related industry.

### § 1259.403 Limitations.

The same limitations shall apply as are stated in § 1259.203.

### § 1259.404 Suspension or termination of designation.

The Administrator or designee, the Director, Educational Affairs Division, may, for cause, and after an opportunity for a hearing before an Administrative Judge appointed by the Deputy Administrator, suspend or terminate the Space Grant designation of any institution or consortium.

## Subpart 5—Space Grant Fellowships

### § 1259.500 Description.

The Space Grant fellowship program will provide educational and training assistance to qualified individuals at the graduate level in fields related to space. Awards will be made to institutions of higher education for fellowships. The student recipients shall be known as NASA Space Grant Fellows.

### § 1259.501 Responsibilities.

(a) All institutions which receive Space Grant fellowships will be expected to use the awards to increase the pool of graduate students in fields related to space.

(b) The overall fellowship program shall be cognizant of institutional diversity and geographical distribution.

### § 1259.502 Application procedures.

(a) All applicants for designation as Space Grant colleges and consortia must apply for Space Grant fellowships.

(b) Applicants for Space Grant program or project grants (under § 1259.200) and for national needs grants (under § 1259.300) may also apply for Space Grant fellowships.

(c) There will be a merit review selection of Space Grant fellowship awards.

### § 1259.503 Limitations.

(a) Fellowships shall be awarded only to Nationals of the United States.

(b) Any students supported under this fellowship program shall not be funded for more than 4 years unless the Director, Educational Affairs Division, makes an exception.

## Subpart 6—Space Grant Review Panel

### § 1259.600 Panel description.

An independent committee, the Space Grant Review Panel, which is not subject to the Federal Advisory Committee Act, shall be established to advise the Administrator with respect to Space Grant program and project awards, the Space Grant fellowship program and the designation and operation of Space Grant colleges and consortia. A majority of the voting members shall be individuals who, by reason of knowledge, experience, or training are especially qualified in one or more of the fields related to space. The other voting members shall be individuals who, by reason of knowledge, experience or training, are especially qualified in, or representative of, education, extension services, State government, industry, economics, planning or any other activity related to the purposes of the Space Grant program.

### § 1259.601 Establishment and composition.

(a) The Panel, to be located at NASA Headquarters in Washington, DC, will be composed of ten voting members who are not current NASA employees.

(b) It shall include four from Federal departments, agencies or entities that have an interest in space programs or science and education, and six nonfederal representatives.

(c) The nonfederal representatives shall include two persons who are directly involved with the Space Grant program at a Space Grant college or consortium, one person involved with the Space Grant program at a university that is not a designated Space Grant college, a university president or chancellor, one representative of a space-related industry and the last person to be from whatever field the Administrator determines to be of greatest concern.

(d) The Panel members shall be appointed by the Administrator or designee.

(e) The relevant organizations and associations in aerospace and science

education fields will be asked to provide three names for each position on the panel. The Administrator shall consider them, but not be limited to them, in the selection process.

(f) The Administrator or designee shall select a Chair and a Vice Chair. The Vice Chair shall act as Chair in the absence or incapacity of the Chair.

(g) The Administrator or designee may select NASA officials to serve as ex officio, nonvoting members of the panel.

### § 1259.602 Conflict of interest.

Any member of the Panel who has a personal or financial interest in an issue before the Panel shall abstain from voting on such issue.

### § 1259.603 Responsibilities.

(a) The Panel shall advise the Administrator and the Director, Educational Affairs Division, with respect to:

(1) Applications or proposals for, and performance under, awards made pursuant to sections 206 and 207 of Title II of the Act;

(2) The Space Grant fellowship program;

(3) The designation and operation of Space Grant colleges and Space Grant regional consortia, and the operation of Space Grant and fellowship programs;

(4) The formulation and application of the planning guidelines and priorities pursuant to section 205 (a) and (b)(1) of Title II of the Act; and

(5) Such other matters as the Administrator refers to the Panel for review and advice.

(b) The Panel shall meet biannually and at any other time at the call of the Chair or upon a request from a majority of the voting members or at the call of the Administrator.

(c) The Panel may exercise such powers as are reasonably necessary in order to carry out the duties enumerated in paragraph (a) of this section.

(d) The Director, Educational Affairs Division, shall appoint an Executive Secretary who shall perform administrative duties for the Panel.

(e) Federal members of the Panel will have their agencies reimbursed by NASA for any travel costs and per diem expenses required to attend Panel meetings.

(f) Nonfederal members of the Panel will be reimbursed by NASA for travel costs and per diem expenses required to attend Panel meetings.

# PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

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AUTHORITY: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.), and OMB Circular A–110.

SOURCE: 61 FR 38059, July 23, 1996, unless otherwise noted.

## Subpart A—General

### § 1260.1 Authority.

(a) The National Aeronautics and Space Administration (NASA) awards grants and cooperative agreements under the authority of 42 U.S.C. 2473(c)(5), the Space Act. This part 1260 is issued under the authority of 42 U.S.C. 2473(c)(1).

(b) The Office of Management and Budget (OMB) approved information collection under the Paperwork Reduction Act through September 30, 1998

and assigned OMB control numbers 2700–0047, Property Management and Control; 2700–0048, Patents; and 2700–0049, Financial Management and Control. OMB control number 2700–0047 applies to grants subject to subparts A and B of this part.

### §1260.2 Definitions.

Additional definitions can be found in §1260.102.

*Administrative grant officer.* A Federal employee delegated responsibility for grant administration; e.g., under a delegation from a NASA grant officer.

*Amendment.* Any document used to effect modifications to grants and cooperative agreements. Amendments may be issued unilaterally at the discretion of the Grant Officer.

*Effective date.* The date work can begin and the recipient can start spending grant funds. The effective date could be earlier or later than the date of signature on a basic award or modification.

*Grant specialist.* A Government employee who is assigned the responsibility of negotiating and/or administering grants.

*Historically Black Colleges and Universities.* Institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

*Minority educational institution.* An institution determined by the Secretary of Education to meet the requirements of 34 CFR 637.4.

*Multiple year grant.* A grant for which NASA obligates funds for an initial period and states an intention to obligate funds for one or more additional periods. The initial period together with the unfunded periods exceeds one year (see §1260.13(b)).

*Non-profit organization.* An organization that qualifies for the exemption from taxation under §501 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 501.

*Performance Report.* A concise statement of work accomplished during the report period (see §1260.75(e)).

*Provision.* A term or condition applicable to grants awarded under this part 1260 (see §1260.20).

*Recipient acquired equipment.* Equipment purchased or fabricated with grant funds by a recipient for the performance of work under its grant.

*Small business concern.* A concern, including its affiliates, which is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

*Small disadvantaged business concern.* A small business concern owned and controlled by individuals who are both socially and economically disadvantaged (within the meaning of §8(a (5) and (6) of the Small Business Act, as amended; 15 U.S.C. 637(a (5) and (6); and 13 CFR 24).

*Special condition.* A term or condition that is not applicable to all grants or is temporary in nature (see §1260.50).

*Summary of Research.* A document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed (see §1260.75(f)(1)).

*Women-owned small business concern.* A small business concern that is at least 51 percent owned by women who are U.S. citizens and who also control and operate the business (15 U.S.C. 637(d)).

[61 FR 38059, July 23, 1996, as amended at 62 FR 63452, Dec. 1, 1997]

### §1260.3 Applicability.

Subparts A and B of this part 1260 establish policies and procedures for all grants and cooperative agreements awarded by NASA to educational institutions and other non-profit organizations.

### §1260.4 Amendment.

This part 1260 will be amended by publication of changes in the FEDERAL REGISTER. Changes that require immediate dissemination may be issued as Grant Notices.

### §1260.5 Publication.

(a) The NASA Grant and Cooperative Agreement Handbook is published as part 1260 of title 14 of the Code of Federal Regulations (CFR).

(b) Subscriptions to the NASA Grant and Cooperative Agreement Handbook may be purchased from the Superintendent of Documents, United States

Government Printing Office, Washington, DC 20402, telephone number (202) 512–1800. Requests should cite GPO Subscription Stock No. 933–001–00000–8. A subscription consists of the basic edition, plus all changes issued for an indefinite period.

**§ 1260.6 Deviations.**

(a) A deviation is required for any of the following:

(1) When a prescribed provision (but not a special condition) set forth verbatim in this part 1260 is modified or omitted.

(2) When a provision is set forth in this part 1260, but not for use verbatim, and the Center substitutes a provision which is inconsistent with the intent, principle, and substance of the provision.

(3) When a form prescribed by this part 1260 is altered or another form is used in its place.

(4) When limitations, imposed by this handbook upon the use of a grant provision, form, procedure, or any other grant action, are changed.

(5) When a form is created for recipient use that constitutes a ''Collection of Information'' within the meaning of the Paperwork Reduction Act (44 U.S.C. 35) and its implementation in 5 CFR part 1320.

(b) Requests for authority to deviate from this part 1260 shall be submitted to the Office of Procurement, NASA Headquarters, Contract Management Division (Code HK). Requests, signed by the Procurement Officer, shall contain:

(1) A full description of the deviation, the circumstances in which it will be used, and identification of the requirement from which a deviation is sought;

(2) The rationale for the request, pertinent background information, and the intended effect of the deviation;

(3) The name of the recipient, identification of the grant affected, and the dollar value;

(4) A statement as to whether the deviation has been requested previously, and, if so, details of that request; and

(5) A copy of legal counsel's concurrence or comments.

(c) Where it is necessary to obtain a deviation on OMB Circular A–110 (Subpart B of this part), Code HK will process all necessary documents in accordance with § 1260.104.

PRE-AWARD REQUIREMENTS

**§ 1260.10 Proposals.**

(a) A grant can result from:

(1) *An NRA, AO, CAN or BAA.* A proposal submitted in response to a broad agency announcement (BAA) such as a NASA Research Announcement (NRA), Announcement of Opportunity (AO), Cooperative Agreement Notice (CAN), an agencywide program announcement such as the Graduate Student Research Program, or after approval by the Associate Administrator for Procurement or designee. NRA's and BAA's are described in the NASA FAR Supplement (NFGS) 48 CFR part 1835. AO's are described in 48 CFR part 1870, subpart 1870.1.

(2) *An unsolicited proposal.* Guidance on unsolicited proposals is contained in the Federal Acquisition Regulation (FAR) 48 CFR subpart 15.5 and NFS 48 CFR subpart 1815.5. The synopsis requirement in FAR 48 CFR 15.507(b)(4), however, does not apply to the grant process. Contact with NASA technical personnel prior to proposal submission is encouraged to determine if preparation of a proposal is warranted. These discussions should be limited to understanding NASA research needs and do not jeopardize the unsolicited status of any subsequently submitted proposal.

(b) The proposal shall contain a detailed narrative description of the work to be undertaken, including the objectives of the project and the applicant's plan for carrying it out.

(1) *Budget content.* All proposals shall include budget data as prescribed in the Budget Summary in exhibit C of the appendix to this subpart A of this part 1260. Narrative detail must support the budgets as designated in exhibit C to appendix to this subpart.

(i) *Cost issues.* The recipient institution is responsible for ensuring that costs charged are allowable, allocable, and reasonable under the applicable cost principles governed by OMB Circular Nos. A–21 and A–122. For other details see §§ 1260.25 and 1260.127.

(ii) *Indirect Costs.* Subject to applicable cost principles, rates are negotiated between recipients and the cognizant

agencies assigned under OMB Circular No. A–21. NASA is required to apply the negotiated rate for all grants awarded.

(iii) *Cost sharing.* NASA may accept cost sharing when voluntarily offered, and all awards including cost-sharing are subject to §§1260.13(c) and 1260.123. The amount of cost sharing will not be a factor in determining whether to select a proposal for award. However, recipients may be requested to secure nonfederal matching funds equal to the program portion to training and education grants.

(2) *Multiple year grants.* In accordance with NASA policy to foster continuity of research, multiple year grant proposals are encouraged, where appropriate, for a period generally up to three years. Continuing research programs will be subject to peer evaluation at least once every three years. Proposals for multiple year grants shall describe the entire research project and include a complete budget for year one and separate estimates for each subsequent year (see §1260.13(b)).

(c) *Certifications and assurances* shall be made in accordance with §1260.117, as follows:

(1) *Civil rights requirements.* Annually, recipients must furnish assurances on NASA Form 1206 of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252.

(2) *Debarment and suspension, drug-free workplace, and lobbying.* NASA grants are subject to the provisions of: 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by §1265.110 or §1265.610; and 14 CFR part 1271 ''New Restrictions on Lobbying.'' These certifications are required to be submitted with each proposal, including extensions. NASA does not require any particular form or format, but does require specific language.

### §1260.11 Evaluation and selection.

(a) *General.* Technical evaluation of proposals will be conducted by the cognizant NASA technical office and may be based on peer reviews.

(b) *Under NRA's, AO's, CAN's, and other BAA's.* The selecting official will furnish the grant officer a signed selection statement and a technical evaluation based on the evaluation criteria stated in the NRA, AO, CAN, or BAA. If a proposal is not selected, the proposer will be notified in accordance with the NRA, AO, CAN, or BAA.

(c) *Under unsolicited proposals.* (1) The evaluation of unsolicited proposals must consider:

(i) If the subject of the proposal is available to NASA from another source without restriction.

(ii) If the proposal closely resembles a pending competitive acquisition or a current, open BAA's under which the unsolicited proposal could be evaluated.

(iii) If the research proposed demonstrates an innovative and unique method, approach, or concept.

(iv) The proposals overall scientific or technical merit.

(v) The potential contribution to NASA's mission.

(vi) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(vii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(2) An unsolicited proposal recommended for acceptance shall be supported by a Justification for Acceptance of an Unsolicited Proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The grant officer's signature on the award document will indicate approval.

(3) NASA will promptly notify in writing each organization that submitted a proposal that will not be funded. Proposals will be returned only when requested.

(d) *Equipment justification on travel justification.* Unless the proposal is selected using a competitive process, for example, a NASA Research Announcement or a Cooperative Agreement Notice, these documents will be submitted by the technical office for grant officer approval when more than half of

the proposed budget is for equipment or travel and associated indirect cost. The justification shall describe the extent to which the equipment or travel is necessary.

(e) *Proposal budget evaluation.* (1) The technical officer will review the recipients' estimated cost for conformance to program requirements and funds availability. The results of this review shall be recorded in Column B of the proposed Budget Summary Form (Exhibit C). New budgets are not required when the program office recommended funding is within 20 percent of the proposed amount, provided specific proposed objectives have not been added or deleted. However, when equipment and/or subcontracts are involved, the cognizant program office is required to identify the cost element(s) affected by the change in funding level.

(2) The grant officer will review the budget, and any changes made by the technical officer, to identify any item which may be unallowable under the cost principles, or which appear unreasonable or unnecessary. The grant officer will complete Column C of the proposed budget after discussing significant changes with the recipient. Any request for details should be limited.

(3) The grant officer will address requests for direct charge of general purchase equipment in a negotiation summary and indicate whether the proposed purchase is approved as a direct cost.

(f) *Incremental funding.* NASA reserves the right to either fully fund or incrementally fund grants. Grants with anticipated annual funding exceeding $50,000 may be funded for less than the amount stated in the proposal, provided:

(1) Two increments per grant year are authorized. The second increment will be the balance of funding for the year.

(2) The special condition § 1260.53, Incremental Funding, is included in the grant.

(g) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the Government Printing and Binding Regulations, No. 26, February 1990, S. Pub. 101–9, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800, published by the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO). The grant officer will be advised in writing of the results of the ICPMO review.

(h) *Rights in data.* Section 1260.29 is adequate only for grants for basic or applied research where the principal purpose (or only expected NASA involvement) is the publication or dissemination of the results, such as in journals or NASA publications (see § 1260.21).

(i) *Clean Air and Federal Water Pollution Control Acts.* (1) By accepting a grant that contains § 1260.33, the recipient agrees that the expenditure of grant funds is in compliance with the Acts.

(2) The Administrator may approve exemptions from this prohibition under certain circumstances under E.O. 11738. Requests for exemptions or renewals thereof shall be made to the Office of Procurement, NASA Headquarters, Contract Management Division (Code HK), Washington, DC 20546.

[61 FR 38059, July 23, 1996, as amended at 62 FR 63452, Dec. 1, 1997]

### § 1260.12 Choice of award instrument.

(a) This section and § 1260.111 provide guidance on the appropriate choice of award instruments consistent with 31 U.S.C. 6301 to 6308. Throughout § 1260.12, the term *grant* does not include ''cooperative agreements.''

(b) A procurement contract is a mutually binding legal relationship obligating the seller to furnish supplies or services (including construction), and the buyer pays for them.

(1) The principal purpose of a procurement contract is to acquire, for NASA's direct use or benefit, a well-defined, specific effort clearly required for the accomplishment of a scheduled NASA mission or project.

(2) If it is determined that a procurement contract is the appropriate type of funding instrument to meet NASA's purposes, the procurement shall be conducted under the FAR and the NFS.

(c) A grant shall be used as the legal instrument to reflect a relationship between NASA and a recipient whenever

the principal purpose is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. The following general characteristics meet the statutory criteria for use of a grant:

(1) Substantial involvement is not expected between NASA and the recipient when carrying out the activity.

(2) The exact course of the work and its outcome cannot be defined precisely and specific points in time for achievement of significant results cannot be realistically specified.

(3) Simplicity and economy in execution and administration are mutually desirable.

(4) Grants are distinguished from contracts in that grants provide financial or other tangible assistance to the recipient to carry on a fairly autonomous research program.

(d) The following defines various types of NASA grants:

(1) A research grant is used to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study, or attempting to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art.

(i) The research requires long term support (i.e., in excess of one year) for the study to mature to maximum scientific effectiveness (this does not preclude shorter-term grants;

(ii) NASA desires, or the nature of the proposed investigation is such, that the recipient will bear prime responsibility for the conduct of research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the resources provided;

(iii) Meaningful technical reports (as distinguished from Performance Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

(2) An education grant is an agreement that provides funds to an educational institution or other nonprofit organizations within one or more of the following areas:

(i) Capturing student interest and/or improving student performance in science, mathematics, technology, or related fields;

(ii) Enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics, or technology;

(iii) Supporting national educational reform movements;

(iv) Conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and

(v) Developing instructional materials (e.g., teacher guides, printed publications, computer software, and videotapes) or networked information services for education.

(3) A training grant is an agreement that provides funds to an educational institution or other non-profit organization solely by providing scholarships, fellowships, or stipends to students, teachers, and/or faculty.

(i) NASA training grants are awarded to colleges, universities, or other nonprofit organizations; not to individual students, teachers, or faculty members. It is the responsibility of the institution receiving the grant to approve the faculty, teachers, and/or students who will participate in the specific program, in cooperation with NASA. If a student, teacher, or faculty member ceases to participate in the program for any reason, the institution, with prior NASA approval, may appoint another student, teacher, or faculty member to complete the remaining portion of the grant period. Replacement students, teachers, and/or faculty electing to apply for the following program year are not automatically entitled to an award and are subject to the evaluation/selection procedures administered to new applicants. Any participant receiving support under a NASA training grant may not concurrently hold another Federal fellowship or traineeship.

(ii) No applicant shall be denied consideration or appointment on the grounds of race, creed, color, national origin, age, sex, or disability.

(iii) Students and faculty receiving direct support under a NASA training grant must be U.S. citizens.

(iv) Duration of the award is program specific. Refer to program policies and procedures for details. Renewal is contingent upon a successful performance evaluation as prescribed by the program, concurrence by the NASA technical officer, and the availability of funds.

(v) No substantial involvement is expected between NASA and the recipient. A student or faculty member receiving support under a NASA training grant does not incur any formal obligation to the Government.

(vi) Unused funds may be carried over into the following program year without further NASA approval. This carryover amount need not be shown in the budget for the next program year.

(vii) The use of training grant funds to acquire equipment, passenger carrying vehicles, land (or any interest therein), or to acquire or construct facilities will not be permitted. Government furnished equipment will not be provided.

(viii) All foreign travel must be clearly essential to the research effort and must, to be charged to a grant, have the prior written approval of the NASA technical officer and the grant officer for each trip, regardless of its inclusion in the proposal budget.

(ix) An Administrative Report must be submitted under the guidelines described by the specific program policies and procedures.

(4) A facilities grant can be issued by NASA under the authority of the Space Act, 42 U.S.C. 2473(c)(5). It is used to provide for the acquisition, construction, use, maintenance, and disposition of facilities. Facilities, as used in this subpart, means property used for production, maintenance, research, development, or testing.

(i) Prior approval by the Associate Administrator of Procurement and a review by legal counsel to assure legal sufficiency are required. It is unlikely an award will be made unless Congressionally mandated.

(ii) To obtain approval, prior to proceeding with the award a package will be forwarded to the Director, Contract Management Division (HK), that includes pertinent background information, detailed rationale for the request, dollar value, and name of the recipient.

(e) A cooperative agreement shall be used as the legal instrument to reflect a relationship between NASA and a recipient whenever the principal purpose is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute and substantial involvement is expected between NASA and the recipient during performance of the contemplated activity. Under 31 U.S.C. 6305, characteristics inherent in a cooperative agreement include those that apply to a grant, plus the following:

(1) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This could involve an active NASA role in collaborative relations, access to a NASA site or equipment, or sharing NASA facilities and personnel;

(2) The project, conducted as proposed, would not be possible without extensive NASA-recipient technical collaboration;

(3) The nature of the collaboration can be clearly defined and specified in advance (special provision § 1260.51 shall be used). Cooperative agreements would be appropriate, for instance, where a university investigator works for a substantial amount of time at a NASA Center (or a NASA investigator works at a university), or when the collaboration is such that a jointly authored report or education curriculum product is appropriate.

(f) Grants and cooperative agreements with foreign organizations are awarded under the authority of the Space Act, 42 U.S.C. 2473(c)(5).

(1) Before initiating action, the grant officer shall coordinate with the Headquarters Office of External Relations, International Relations Division (Code IR). Grants to other than foreign government institutions require a review by the Office of General Counsel.

(2) It is NASA policy that, in general, research will be accomplished on a no-exchange-of-funds basis with foreign entities. In these cases, NASA enters into agreements undertaking projects

of international scientific collaboration. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

**§1260.13 Award procedures.**

(a) *Award instruments*—(1) *Annual grant.* Grant may be awarded for a short term (e.g., on an annual basis).

(2) *Multiple year grant.* NASA policy is to make maximum use of multiple year grants to support research projects that may span several years. A multiple year grant is generally selected for a period of three years in keeping with NASA's policy calling for research to be peer reviewed at least every three years.

(i) If the decision to provide multiple year funding to a research proposal is made, the special condition in §1260.52, ''Multiple Year Grants'', will be included in the award.

(ii) Periods approved under the Multiple Year Grants special condition in §1260.52, and funded at the levels specified in the special condition, are not considered to be new awards. Therefore, new proposals, new proposal-related certifications (such as Drug Free Workplace and Debarment and Suspension) and new technical evaluations are not required.

(iii) If NASA program constraints or developments within the research project dictate a reduction in the funding level specified under a multiple year grant period, research may continue at the reduced level under the terms of the special condition; however, the recipient may rebudget under the grant provisions to keep the project within the funding actually provided.

(3) *Supplements.* A supplement to a grant may be issued at any time when work is introduced which is outside the scope of the approved proposal; or when there is a need for substantial unanticipated funding. Supplements require the submission of revised budget proposals and technical evaluations. Since Supplements will be performed within the existing period of performance, certifications will not normally be required.

(4) *Extensions.* Grant may be extended beyond the expiration date in accordance with §1260.22, ''Extensions'', if additional time beyond the established period of performance is required to assure adequate completion of the original scope of work within the available funding.

(5) *Renewals.* Grant renewals provide for continuation of research beyond the original scope, period of performance and funding levels; therefore, new proposals, certifications and technical evaluations are required prior to the execution of a grant renewal. Continued performance within a period specified under the Multiple Year Grants special condition does not constitute a renewal. Peer review of the continuing research should be accomplished prior to selecting a research grant for renewal. The Multiple Year Grant special condition may be incorporated into renewals.

(b) *Funding arrangements.* While NASA normally provides full funding support for research grants, alternate methods of grant funding are as follows:

(1) *Cost sharing.* Since NASA grant recipients usually gain no measurable benefit from grants other than conducting research, cost sharing for research grants is not generally required. NASA may, however, accept cost sharing when voluntarily offered. Additionally, in instances when the Grant Officer determines that the recipient will benefit from research results through sales to non-Federal entities, cost sharing based upon this mutuality of interest will apply (see §1260.123). When cost sharing is used, the Grant Officer shall insert a special condition substantially as shown in §1260.54, ''Cost Sharing.''

(2) *Partial support.* NASA may provide partial support for a research project or conference where additional funding is being provided by other Federal agencies. If the grant also involves cost sharing by the recipient, the Grant Officer will ensure that the recipient's share does not include any Federal funds.

[62 FR 63452, Dec. 1, 1997]

**§1260.14 Limitations.**

(a) As a matter of policy, NASA does not award grants to commercial firms. However, Cooperative Agreements may

be awarded to commercial firms in accordance with § 1260.300.

(b) NASA does not award grants for donative assistance purposes, but only to meet program objectives. Research in any academic discipline related to NASA interests normally will qualify. However, advice of legal counsel should be sought in unusual situations, or when unusual project activities or organizational attributes are evident.

(c) It is NASA's policy that non-monetary (zero dollar) grants or cooperative agreements shall not be used (except for no-cost extensions). Loans of Government personal property not associated with a contract, grant, or cooperative agreement under 31 U.S.C. 6301 to 6308, and made under the Space Act of 1958, should be consummated as loan agreements.

(d) Grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements (see 48 CFR subpart 37.2 (FAR) and 48 CFR subpart 18237.2 (NFS)).

### § 1260.15 Format and numbering.

(a) *General,* A grant shall be brief, containing only those provisions and special conditions necessary to protect the interests of the Government.

(b) *Formats.* Those shown in exhibit B of the appendix to this subpart A shall be used for the award of all NASA grants and cooperative agreements. Computer-generated versions are allowed. Provisions for grants with U.S. organizations shall be incorporated by reference, and preprinted checklists may be used. Special conditions and provisions for grants with foreign organizations will be printed in full text. An acceptance block may be added when the grant officer finds it necessary to require bilateral execution of the grant. When attaching detailed budgets, salaries will not be revealed.

(c) *The identification numbering system.* (1) For research, education, and facilities grants, numbering shall conform to NFS 48 CFR 1804.7102–3, except that a NAG prefix will be used in lieu of the NAS prefix The prefix designation will include the Center Identification Number; e.g., NAG5 would be the Goddard prefix designation. They will be sequentially numbered.

(2) Cooperative agreements will use the prefix NCC plus the Center Identification Number. They will be sequentially numbered.

(3) Training grants will use the prefix NGT plus the Center Identification Number. They will be sequentially numbered.

(4) The Catalog of Federal Domestic Assistance (CFDA) Numbers does not apply to NASA grants.

### § 1260.16 Distribution.

Copies of grants and supplements will be provided to: payment offices (original copy); technical officers; administrative grant officers when delegated; the NASA Center for AeroSpace Information (CASI), Attn: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934; and other appropriate offices. The statement of work accepted by NASA and a copy of the approved budget will be provided to the administrative grant officers. CASI will also receive the statement of work. The file will record the addresses for distribution.

## PROVISIONS

### § 1260.20 Provisions.

(a) The provisions set forth in §§ 1260.21 through 1260.37 shall be incorporated by reference and made a part of NASA research grants, education grants, and cooperative agreements with U.S. educational institutions and nonprofit organizations.

(b) In training grants, the provisions of the following section will be incorporated: §§ 1260.22, 1260.23, 1260.25, 1260.26, 126.28, 1260.29, 1260.31, and 1269.35.

(c) In facilities grants, provisions will be selected on a case-by-case basis.

(d) In research grants awarded to foreign organizations, the provisions of the following sections, modified as necessary, will be in full text: §§ 1260.21, 1260.22, 1260.23, 120.24, 1260.26, 1260.27, 1260.32, and 1260.36. References will not be used to handbooks, statutes, or other regulations which the recipient may neither have access to or can realistically be expected to comply.

(e) Whenever the word *grant* appears in sections §§ 1260.21 through 1260.38, it

shall be deemed to include, as appropriate, the term *cooperative agreement.*

(f) Section 1260.148 and appendix A to subpart B to part 1260 address provisions to be used in contracts awarded by recipients.

### §1260.21 Publications and reports.

PUBLICATIONS AND REPORTS (JULY 1996)

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation. All information disseminated as a result of the grant shall contain a statement which acknowledges NASA's support and identifies the grant by number (e.g., ''The material is based upon work supported by NASA under award No(s) _____'').

(b) Reports shall be in the English language, informal in nature, and ordinarily not exceed three pages (not counting bibliographies, abstracts, and lists of other media). The recipient shall submit the following reports:

(1) A Performance Report for all but the final year of the grant. Each report is due 60 days before the anniversary date of the grant and shall briefly describe what was accomplished during the reporting period as outlined in §1260.151(d). A special provision specifying more frequent reporting may be required.

(2) A Summary of Research (or Educational Activity Report in the case of Education Grants) is due within 90 days after the expiration date of the grant, regardless of whether or not support is continued under another grant. This report shall be comprehensive summary of significant accomplishments during the duration of the grant.

(c) Performance Reports, Summaries of Research, and Education Activity Reports shall include the following on the first page:

(1) Title of the grant.

(2) Type of report.

(3) Name of the principal investigator.

(4) Period covered by the report.

(5) Name and address of the recipient's institution.

(6) Grant number.

(e) Performance Reports, Summaries of Research, and Education Activity Reports shall be distributed as follows:

(1) The Original to the administration grant officer, with a notice to the grant officer that a report was sent.

(2) One copy, in both hard copy and electronic format, to the technical officer.

(f) For Summaries of Research and published reports, one Micro-reproducible copy shall be sent to the NASA Center for Aero-Space Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934.

### §1260.22 Extensions.

EXTENSIONS (JULY 1996)

(a) It is NASA policy to provide maximum possible continuity in funding grant—supported research and educational activities, therefore, grants may be extended for additional periods of time. Any extension requiring additional funding should be supported by a proposal submitted at least three months is advance of the expiration date of the grant.

(b) Recipients may extend the expiration date of a grant if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, in accordance with §1260.125(e)(2), the recipient may unilaterally make a one-time no-cost extension, not to exceed 12 months, prior to the established expiration date. Written notification of such an extension, with the supporting reasons, must be received by the grant officer at least ten days prior to the expiration of the award.

(c) Requests for approval for all other extensions (in excess of 30 days) must be submitted in writing to the grant officer.

### §1260.23 Termination and Enforcement.

TERMINATION AND ENFORCEMENT (JULY 1996)

Termination and enforcement conditions of this award are specified in §§1260.160 through 1260.162. If NASA determines that the recipient has materially failed to comply with the terms and conditions of the grant, NASA may suspend or terminate the grant in whole or in part after consultation with the recipient. However, NASA may immediately suspend or terminate the award without prior notice when it believes such action is necessary to protect the interest of the Government.

### §1260.24 Change in principal investigator or scope.

CHANGE IN PRINCIPAL INVESTIGATOR OR SCOPE (JULY 1996)

The recipient organization and the principal investigator are responsible for the effective conduct of the project or activity supported by this award.

(a) The recipient shall obtain the approval of the NASA grant officer to change the principal investigator or to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument could be grounds for termination, unless alternatives

arrangements are made and approved in writing by the grant officer.

(b) Prior written approval is required from NASA if there is to be a significant change in the objective or scope.

## § 1260.25 Allowable costs.

ALLOWABLE COSTS (JULY 1996)

(a) The recipient institution is responsible for ensuring that costs charged to this award are allowable, allocable, and reasonable under the applicable cost principles defined in § 1260.127. Sections 1260.24, 1260,27, 1260.32, and requests for additional funding require prior approvals.

(b) Payments to individuals for consultant services under a NASA grant shall not exceed the daily equivalent of the maximum rate paid for Level IV of the Executive Schedule, exclusive of expenses and indirect cost.

(c) Recipients may incur pre-award costs 90 calendar days prior to award, provided the costs are necessary for the effective and economical conduct of the project and are otherwise allowable under the terms of the grant. All preaward costs are incurred at the recipient's risk. NASA is under no obligation to reimburse such costs if an award is not subsequently made, or if an award is made for a lesser amount than the recipient anticipated and is insufficient to cover the preaward costs.

(d) Comptroller General decisions govern allowability of costs for international air transportation (see § 1260.37).

## § 1260.26 Financial management.

FINANCIAL MANAGEMENT (JULY 1996)

(a) *Payment.* Advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Center which issued the grant in accordance with procedures provided to the recipient. The recipient shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and, if NASA has delegated administration, to the administrative grant officer, within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported. The final SF 272 is due within 90 days after the expiration date of the grant.

(b) *Management and records.* Financial and program management requirements of §§ 1260.120 through 1260.128 apply to all recipients. Financial records, supporting documents, statistical records, and all other records pertinent to this award shall be retained in accordance with § 1260.153. Provisions of § 1260.26(c) shall apply to subcontractors performing substantive work under this grant.

(c) *Unexpended balances.* Any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. The estimated amount of unexpended funds shall be identified in the grant budget section of the recipient's renewal proposal.

(d) *Program income* will be subject to § 1260.124.

(e) Provisions of § 1260.26(c) shall apply to subcontractors performing substantive work under this grant.

## § 1260.27 Equipment and other property.

EQUIPMENT AND OTHER PROPERTY (JULY 1996)

(a) NASA permits acquisition of special purpose equipment (as defined in OMB Circulars A–21 and A–122) specifically required and only used for research, medical, scientific or other technical activities.

(1) Acquisition of special purpose equipment, costing in excess of $5,000 and not included in the approved proposal budget, requires the prior approval of the administrative grant officer (unless the item is merely a different model of an item in the approved proposal budget).

(2) Title to special purpose equipment acquired by the recipient with grant funds, valued under $5,000 in acquisition cost, shall vest in the recipient and will be considered ''exempt'' in accordance with § 1260.133(b).

(3) NASA may elect to take title to items of special purpose equipment valued at more than $5,000 (acquisition cost each) or when fabricated into a single coherent system (aggregate acquisition cost). The recipient will be advised of the Government's intention to take title in writing if the item is approved for recipient purchase. If the Government does not exercise its right to take title to property acquired by the recipient with grant funds at the time of approval, the property will be considered exempt according to § 1260.133(b). The recipient shall hold title without further obligation to the Federal Government.

(b) General purpose equipment items require the prior approval of the Grant Officer to be a direct charge, shall be titled to NASA, managed in accordance with § 1260.134(f), and reported in accordance with § 1260.27(e).

(c) Grant funds may be expended for the acquisition of land or interests therein or for the acquisition and construction of facilities *only* under a facilities grant, as defined in § 1260.12(g).

(d) The recipient shall maintain a property management system which meets the requirements of §§ 1260.130 through 1260.137. The

cognizant property administration officer or property administrator shall be notified of any major change to an approved system.

(e) The recipient shall submit an Inventory Report, to be received no later than October 31 of each year, which lists all Federally owned property in its custody as of September 30. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the recipient no later than 60 days after the expiration date of the grant.

(1) All reports will include the information listed in paragraph (f)(1) of §1260.134, Equipment.

(2) Negative responses in the Final Inventory Report, when there is no reportable equipment, are required.

(3) The original of each report shall be submitted to the Center Deputy Chief Financial Officer (Finance). Copies shall be furnished to the Center industrial property officer and to ONR .

## §1260.28 Patent rights.

PATENT RIGHTS (JULY 1996)

This award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 ''Patent Rights (Small Business Firms and Nonprofit Organizations)'' and the following:

(a) Where the term *contract* or *contractor* is used in the ''Patent Rights'' clause, the term shall be replaced by the term *grant* or *recipient,* respectively.

(b) In each instance where the term *Federal Agency, agency,* or *funding Federal agency* is used in the ''Patent Rights'' clause, the term shall be replaced by the term *NASA.*

(c) The NASA regulation applicable to paragraph (e) of the ''Patent Rights'' clause is at 37 CFR part 404, Licensing of Government-owned Inventions.

(d) The following item is added to the end of paragraph (f) of the ''Patent Rights'' clause:

(5) The recipient shall include a list of all Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal, and a complete list (or a negative statement) for the entire award period shall be included in the summary of research.

(e) The term *subcontract* in paragraph (g) of the ''Patent Rights'' clause shall include purchase orders.

(f) The NASA implementing regulation for paragraph (g)(2) of the ''Patent Rights'' clause is at 48 CFR 1827.373(b).

(g) The following requirement constitutes paragraph (1) of the ''Patent Rights'' clause:

(1) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the administrative grant officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a ''subject invention'' for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the recipient identify the information and the ''subject invention'' to which it relates at the time of submittal. If required by the administrative grant officer, the recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any ''subject invention'' in any country in which the recipient has applied for patents.

h. *NASA Inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this agreement and, upon timely request, will use reasonable efforts to grant recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

i. In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

## §1260.29 Rights in data.

RIGHTS IN DATA (JULY 1996)

(a) *Fully Funded Efforts.*

(1) *Data* means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant.

(2) The recipient grants to the Federal Government, a royalty-free, nonexclusive and irrevocable license to use, reproduce, distribute (including distribution by transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner

for Federal purposes and to have or permit others to do so for Federal purposes only. Federal purposes include competitive procurement but do not include the right to have or permit others to use data for commercial purposes.

(3) In order that the Federal Government may exercise its license rights in data, the Federal Government, upon request to the recipient, shall have the right to review and/or obtain delivery of data resulting from the performance of work under this grant, and authorize others to receive data to use for Federal purposes.

(4) If information which recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into data as defined herein), identified and marked with a suitable notice or legend and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(b) *Cost Sharing and/or Matching Efforts.* When the recipient cost shares with the Government on the effort, the following is added:

(5) In the event data first produced by recipient in carrying out recipient's responsibilities under an agreement is furnished to NASA, and recipient considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in §1260.29(a)(2).

c. *Add the following paragraph in Cooperative Agreements.* (#) As to data first produced by NASA in carrying out NASA's responsibilities under a cooperative agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it has been obtained from the recipient, such data will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ___ years (*insert a period of up to 5 years.*) after development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such data to any third party without NASA's written approval until the aforementioned restricted period expires.

## § 1260.30 National security.

NATIONAL SECURITY (JULY 1996)

Normally, NASA grants do not involve classified information. However, if information is sought or developed by the recipient that should be classified in the interests of national security, the NASA grant officer who issued the grant shall be notified immediately.

## § 1260.31 Nondiscrimination.

NONDISCRIMINATION (JULY 1996)

(a) To the extent provided by law and any applicable agency regulations, this award and any program assisted thereby are subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), Title IX of the Education amendments of 1972 (Pub. L. 92–318), 20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (Pub. L. 94–135), the implementing regulations issued pursuant thereto by NASA, and the assurance of compliance which the recipient has filed with NASA.

(b) The recipient shall obtain from each organization that applies or serves as a subrecipient, contractor or subcontractor under this award (for other than the provision of commercially available supplies, materials, equipment, or general support services) an assurance of compliance as required by NASA regulations.

(c) Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

## § 1260.32 Subcontracts.

SUBCONTRACTS (NOVEMBER 1997)

(a) For all subcontracts over $100,000, the recipient shall provide the following to the NASA grant officer for approval:

(1) A copy of the proposed subcontract.

(2) The basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) The subcontract budget and basis for subcontract cost or price.

(b) The recipient (with the exception of foreign organizations) shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges

and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

(c) All contracts awarded by a recipient, including small purchases, shall contain the provisions in appendix A of subpart B of this part.

[End of provision]

[61 FR 38059, July 23, 1996, as amended at 62 FR 63453, Dec. 1, 1997]

### §1260.33 Clean air and water.

CLEAN AIR AND WATER (JULY 1996)

(Applicable only if the award exceeds $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)), and 9s listed by EPA, or if the award is not otherwise exempt).

The recipient agrees to he following:

(a) Comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. 7401, et seq.) and of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(b) That no portion of the work under this award will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date that this award was effective unless and until the EPA eliminates the name of such facility or facilities from such listings.

(c) Use its best efforts to comply with clear air standards and clean water standards at the facility in which the award is being preformed.

(b) Insert the substance of the provisions of this clause into any nonexempt subward or contract under the award.

(e) Report violations to NASA or to EPA.

### §1260.34 Procurement standards.

PROCUREMENT STANDARDS (JULY 1996)

a. The recipient shall maintain a procurement system which, at a minimum, meets the requirements set forth in §§1260.140 through 1260.148.

b. Procurement programs funded with Federal funds shall give preference to he purchase of recycled products pursuant to EOA guidelines.

### §1260.35 Foreign national employee investigative requirements.

FOREIGN NATIONAL EMPLOYEE INVESTIGATIVE REQUIREMENTS (JULY 1966)

(a) The recipient agrees to provide the information requested by NASA to allow the recipient's access to a NASA Center for performance of this grant. All visit requests must be submitted in a timely manner in accordance with instructions provided by the Center(s) to be visited.

(b) The recipient acknowledges that NASA reserves the right to perform security checks on foreign national visitors, and to deny or restrict access to a NASA Center, facility, computer system, or technical information in the interest of national security.

### §1260.36 Travel and transportation.

TRAVEL AND TRANSPORTATION (JULY 1996)

(a) The Fly America Act, 49 U.S.C. 40118, requires the recipient to use U.S. flag air carriers for international air transportation of personnel and property to he extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern recipient shipment of hazardous materials and other items.

## Special Conditions

### §1260.50 Special conditions.

(a) In addition to the provisions set forth in §§1260.21 through 1260.37, NASA grants are subject to special conditions, which either are not applicable to all awards or are temporary in nature. Examples are found in §§1260.51 through 1260.66, but NASA may impose other conditions as discussed in §1260.114 or as the requirements dictate. A deviation to this handbook is not required for changes to special conditions.

(b) Special conditions will be printed in full text.

(c) For training grants, use §1260.57 plus any other special conditions necessary.

(d) In facilities grants, special conditions will be selected on a case-by-case basis. As appropriate, the requirements of the following sections will apply: §§1260.132, Real property; 1260.123(c), Cost sharing or matching; and 1260.125(h), Revision of budget and program plans.

(e) Research grants with foreign organizations will include special conditions §§1260.58 through 1260.62, modified as necessary, when not covered under a Memorandum of Agreement (MOA). In addition, other clauses (e.g., §§1260.63 through 1260.66) will be written with

the aid of General Counsel, and added when necessary.

### § 1260.51 Cooperative agreement special condition.

COOPERATIVE AGREEMENT SPECIAL CONDITION (JULY 1996)

(a) This award is a cooperative agreement as it is anticipated there will be substantial NASA involvement during performance of the effort. NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort:

(Reference the approved proposal that contains a detailed description of the work and insert a concise statement of the exact nature of the cooperative interactions that deals with existing facts and not contingencies.)

(b) The terms *grant* and *recipient* mean *cooperative agreement* and *recipient of cooperative agreement,* respectively, wherever the terms appear in provisions and special conditions included in this agreement.

(c) NASA's ability participate and perform its collaborative effort under this cooperative agreement is subject to the availability of appropriated funds and nothing in this cooperative agreement commits the United States Congress to appropriate funds therefor.

### § 1260.52 Multiple year grant.

MULTIPLE YEAR GRANT (JULY 1996)

This is a multiple year grant. Contingent on the availability of funds, scientific progress of the project, an continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year $_____, Anticipated funding date _____.

Third year $_____, Anticipated funding date _____.

(Periods may be added or omitted, as applicable).

### § 1260.53 Incremental funding.

INCREMENTAL FUNDING (JULY 1996)

Only $_____ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making an additional allotment in the amount of $_____ by _____. These funds will be obligated as appropriated funds become available without any action required by the recipient. The recipient will be given written notification by the NASA grant officer. NASA is not obligated to reimburse the recipient for the expenditure of amounts in excess of the total funds allotted by NASA.

### § 1260.54 Cost sharing.

COST SHARING (JULY 1996)

(a) NASA and the recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the recipient's cash and/or non-cash contribution will be on a ___ percent NASA; ___ percent recipient basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by § 1260.123, Cost Sharing or Matching. The applicable Federal cost principles are cited in § 1260.127.

(b) The recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement.

### § 1260.55 Reports substitution.

REPORTS SUBSTITUTION (JULY 1996)

Technical Reports may be substituted for the required Performance Reports. The title page of such reports shall clearly indicate that the substitution has been made and will show the period covered by the originally required Performance Report.

### § 1260.56 Withholding.

WITHHOLD (JULY 1996)

Pending receipt of a satisfactorily completed Summary of Research and/or other reports required under NASA grant No. _____, the Financial Management Office will withhold all payments under this grant (including advance payments). The grant officer will notify the NASA Financial Management Office when payments can resume.

### § 1260.57 Training grant reports.

TRAINING GRANT REPORTS (JULY 1996)

No later than 60 days after the ending date of the grant, the recipient will provide the NASA Headquarters Office of Human Resources and Education an *Administrative Report* that details the fellow's research and academic progress. Pertinent information relating to the student, including the degree granted and employment plans, are to be included. Students are required to submit a *Student Evaluation Form* to the administrative contact at the Center monitoring the work 90 days prior to the ending date of the fellowship.

### § 1260.58 Interest bearing accounts.

INTEREST BEARING ACCOUNTS (JULY 1996)

Advances of federal funds shall be maintained in interest-bearing accounts. Interest

earned on federal advances deposited in such accounts shall be remitted to DHHS at least quarterly, as instructed by the Financial Management Office of the NASA Center which issued the grant. Interest amounts up to $250 per year may be retained by the recipient.

### §1260.59 Choice of law.

CHOICE OF LAW (JULY 1996)

The rights and obligations of the parties to the grant (or cooperative agreement) shall be ascertainable by recourse to the laws of the United States of America. However, it is understood that the laws of the recipient's country will generally apply to recipient activities within that country.

### §1260.60 Invention reporting and rights.

INVENTION REPORTING AND RIGHTS (JULY 1996)

(a) As used in this provision:

(1) The term *invention* means any invention, discovery or improvement:

(2) The term *made* means the conception or first actual demonstration that the invention is useful and operable.

(b) The recipient shall report promptly to the grant officer each invention made in the performance of work under this grant. The report of such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The recipient hereby grants to the Government of the United States of American, as represented by the Administrator of the National Aeronautics and Space Administration, the full rights, title, and interest in and to each such invention throughout the world except _____.

### §1260.61 Public information.

PUBLIC INFORMATION (JULY 1996)

Information regarding this grant (including a copy of this award document) may be released by the recipient without restriction. However, technical information relating to work performed under this grant where there was a NASA contribution should be released by the recipient only after consultation with the NASA Technical Officer.

### §1260.62 Allocation of risk/liability.

ALLOCATION OF RISK/LIABILITY (JULY 1996)

a. With respect to activities undertaken under this agreement, the recipient agrees not to make any claim against NASA or the U.S. Government with respect to the injury or death of its employees or its contractors and subcontractor employees, or to the loss of its property or that of its contractors and subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

b. In addition, the recipient agrees to indemnify and hold the U.S. Government and its contractors and subcontractors harmless from any third party claim, judgment, or cost arising from the injury to or death of any person, or for damage to or loss of any property, arising as a result of its possession or use of any U.S. Government property.

### §1260.63 Payment—to foreign organizations.

PAYMENT—TO FOREIGN ORGANIZATIONS

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

### §1260.64 Customs clearance and visas.

CUSTOMS CLEARANCE AND VISAS

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

### §1260.65 Taxes.

TAXES

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

### §1260.66 Exchange of technical data and goods.

EXCHANGE OF TECHNICAL DATA AND GOODS

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

## POST-AWARD REQUIREMENTS

### §1260.70 Delegation of administration.

(a) Pursuant to the Government-wide ''cross-servicing'' policy, NASA grants and cooperative agreements shall be delegated for full administration (including property and closeout) to the Office of Naval Research (ONR). Exceptions to this policy must be approved by the Procurement Officer, documented, and made part of the file.

(b) Delegations will be made by using NASA Form NF 1671. The grant officer will strike out any parts of the form that do not apply and write in specific

instructions regarding actions requiring ONR involvement. The grant officer will inform the recipient, in writing, that a delegation has been made.

(c) ONR will acknowledge this delegation by returning a NF 1431 to the grant officer within five days of receipt.

### § 1260.71 Supplements and renewals.

(a) A NASA grant officer can unilaterally make minor or administrative changes to a grant; e.g., Reports Substitution (§ 1260.55), Withholding (§ 1260.56), and Novations (§ 1260.74). Renewal of grant (§ 1260.22) is a unilateral decision by NASA based upon availability of funds, continued research relevance, and progress made by the recipient.

(b) To eliminate the paperwork burdens associated with closeout and negotiations for a new grant, ongoing efforts to continue the same effort at the same institution will be accomplished by modifying the current instrument, unless there is a significant change in the nature of the work or closure would be in the best interest of the Government.

(1) Grants should be renewed prior to their expiration date. When possible, the period of performance should be continuous with the prior grant. If otherwise acceptable, NASA may fund an extension through a multiple year grant (§ 1260.13(a)) or by extending the existing grant. Such extensions (other than no-cost extensions) must be supported by a new proposal from the recipient.

(2) To insure continuation, the technical office should forward to the grant office a complete technical evaluation, support documentation, and/or a funded Procurement Request at least 45 days before the expiration of the funded period.

Although the grant officer has little control over the timely receipt of purchase requests, he/she is responsible for informing the technical officer of current lead-time requirements and for timely processing continuation agreements.

(3) The technical office will notify the recipient if the grant is to be funded or if additional information is required. Alternatively, if a grant is not to be renewed, the program office should give the grant officer and the recipient 30-day notice.

(c) Requests by the recipient to modify a grant must be in writing to the grant officer. Examples might include changes in principal investigator or additional funding. After concurrence by the program manager, a grant supplement will be unilaterally issued at the discretion of the grant officer.

(d) A single no-cost extension for up to 12 months can be unilaterally issued by the recipient as detailed in paragraph (b) of the provision § 1260.22, Extensions.

(e) When two or more actions are completed on a single supplement, the supplement will reflect the effective date of the earliest action.

### § 1260.72 Adherence to original budget estimates.

(a) Although NASA assumes no responsibility for budget overruns, the recipient may spend grant funds without strict adherence to individual allocations within the proposed budgets, except as provided in §§ 1260.27 and 1260.32.

(b) The revision of budgets and program plans are covered in § 1260.125.

### § 1260.73 Transfers, novations, and change of name agreements.

(a) *Transfer of grants.* Novation as provided in § 1260.73(b), is the only means by which a grant may be transferred from one institution to another. When the principal investigator changes organizational affiliation and desires support for the research at a new location and novation is not used, a new proposal must be submitted to NASA via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the recipient, prior to execution, shall be reviewed by legal counsel for legal sufficiency.

When a change in principal investigator from one institution to another occurs, novation of the grant is preferable to termination.

**§1260.74 Property use, disposition, and vesting of title.**

(a) Administrative grant officers shall not approve the expenditure of grant funds for the acquisition of general purpose equipment as defined by OMB Circulars A–21 and A–122 unless the recipient's justification for the equipment demonstrates that the equipment will be used exclusively for research.

(b) Property administration and plant clearance for all grants and cooperative agreements will be delegated to the appropriate DoD property administration office.

(c) Administrative grant officers will provide copies of property related grant documentation to the Center industrial property officer (prior to award or modification) when the program office elects to retain title to an existing item of Government property, to furnish the property to the recipient in lieu of donation or to take title to property acquired by the recipient. When NASA acquires title to items of recipient acquired equipment or when NASA transfers an item of Government property to a recipient as Federally owned property, the administrative grant officer shall notify both the cognizant NASA Center financial management officer and the equipment management officer to ensure proper entries in financial and property accounting records.

(d) NASA policy encourages titling as ''exempt'' all property acquired by a nonprofit organization whose primary purpose is the conduct of scientific research, without further obligation to the Federal Government. Unless NASA takes title, equipment purchased with grant funds vests in the recipient subject to §1260.134.

(1) If NASA elects to take title to recipient acquired property, said decision will be subject to §1260.132(b)(3).

(2) Title to individual items or coherent systems (as defined in §1260.74(f)) of recipient acquired equipment purchased at a cost of more than $5,000 may revert back to NASA at NASA's discretion, subject to the following conditions.

(i) NASA shall notify the recipient in writing as part of the approval for retaining the item. If the item was requested as part of the original budget, the award must specify NASA's intention to take title.

(ii) Government titled property will be subject to the provisions for other Federally owned property as stated in §1260.133.

(3) Title to equipment costing $5,000 or less is not subject to transfer to the agency, except under the conditions of §1260.74(f).

(e) Title to Federally-owned property remains with the Government.

(1) In accordance with Pub. L. 94–519, NASA will not acquire property from other agencies for use on NASA grants.

(2) When Federally-owned property is reported excess by a recipient, the administrative grant officer will report the equipment to the Center property disposal officer.

(3) NASA policy encourages the donation of existing, excess NASA property to nonprofit organizations whose primary purpose is the conduct of scientific research.

(f) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities, and their separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes recipient-owned components, the property will be considered to be exempt. The requirement for agreement regarding NASA's retention of its option to take title shall further apply where it is expected that one or more recipient-acquired components costing $5,000 or less will be fabricated into a single coherent system costing in excess of $5,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

**§ 1260.75 Reports.**

(a) The grant officer is responsible for submitting the Individual Procurement Action Report (NASA Form 507) for all grant actions.

(b) The Committee on Academic Science and Engineering (CASE) Report (NASA Form 1356), for research grants awarded to educational institutions, is submitted with the basic award procurement request. In the case of certain non-funded actions for educational institutions, the NF 1356 is initiated by the grant officer.

(c) The Federal Cash Transactions Report (SF 272) shall be submitted by the recipient within 15 working days following the end of each Federal fiscal quarter, as a condition of receiving advance payments. Instructions and answers to payment questions will be provided by the Financial Management Office of the Center that issued the grant. (see § 1260.152.)

(d) The annual Inventory Report of Federally Owned Property in Custody of the Recipient will be submitted by the recipient by October 31, as required by § 1260.27(e). The listing shall include information specified in § 1260.134(f) together with beginning and ending dollar value totals for the reporting period.

(e) A Performance Report shall be submitted in accordance with §§ 1260.21 and 1260.151(d). Recipients shall not be required to submit more than the original and two copies of performance reports (§ 1260.151(e)). At the request of the technical officer, this requirement may be modified by use of special condition § 1260.55 entitled ''Reports Substitution''.

(f) Final reports are as follows.

(1) A Summary of Research for research grants, an Education Activity Report for education grants, or an Administrative Report for training grants, shall be submitted as required by § 1260.21 or § 1260.57. Citation of publications resulting from research, or abstracts thereof, may serve as all or part of the summary. A separate report is required if inventions and patents resulted from the work. In addition, students are required to submit a Student Evaluation Form to the administrative contact at the Center monitoring the work 90 days prior to the ending date of a fellowship.

(2) A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, shall be submitted by the recipient no later than 60 days after the end of the grant, as required by § 1260.27.

(3) A properly certified Final Federal Cash Transactions Report, SF 272, is required from the recipient for each grant, as addressed in § 1260.26(a).

(g) One copy of each Disclosure of Lobbying Activities (SF LLL), under 14 CFR 1271.110, shall be provided by the grant officer to the Procurement Officer for transmittal to the Director, Contract Management Division (Code HK). Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to Code HK.

(h) The Director, Program Operations Division (Code HS), shall provide to the General Services Administration information concerning all NASA debarments, suspensions, determinations of ineligibility, and voluntary exclusions of persons in accordance with 14 CFR 1265.505.

(i) Remedies for Noncompliance are delineated in § 1260.162.

(1) Failure of the recipient to provide a required grant report can result in the Agency and the public being denied information about grant activities, NASA officials having less information for making decisions, grant closeout being delayed, and confidence being undermined as to whether the recipient will meet the requirements under other grants. Because NASA grants provide for advance payments, a recipient could be fully paid before final reports are due. At this point, it is too late to withhold payment on the existing grant.

(2) Consistent with §§ 1260.122(h) and 1260.162(a), NASA does not withhold payment until a recipient has failed to comply with report requirements for more than 90 days. To remedy failure to furnish reports, special condition § 1260.56, Withholding, should be used when awarding a new grant or modifying an existing grant with non-responsive organizations.

(i) Special condition §1260.56 instructs the Financial Management Office to withhold payment pending receipt of the satisfactorily completed reports required in §1260.75.

(ii) The grant officer may waive the withholding requirement when the recipient has taken corrective action that makes withholding unnecessary. To release for payment the amount withheld, grant officers shall send a memorandum to their Financial Management Office.

### §1260.76 Suspension or termination.

Suspension of termination of a grant prior to the planned expiration date must be reserved for exceptional situations that cannot be handled any other way (see §§1260.23 and 1260.160). Before suspending or terminating any grant with a university, the NASA grant officer and technical officer shall take into account the consequences to graduate students working under the grant.

### §1260.77 Closeout procedures.

The closeout of a grant is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by both the recipient and NASA and no further action is necessary (see §1260.171).

(a) *Initiation.* The NASA grant officer shall determine from the technical officer that work under a particular grant will not be continued or is completed. The NASA grant officer will promptly notify ONR to begin closeout within 90 days of this determination. ONR will inform the recipient of pending closeout and the final documentation required, to the extent practicable, prior to the grant's expiration date.

(1) To expedite closeout, NASA grant officers shall respond to ONR inquiries within 30 days. The use of E-mail communication between ONR and NASA is encouraged.

(2) Recipients shall not be requested to complete forms or supply information other than discussed in §1260.75(c) through (f), except in unusual situations.

(b) *Reports submission.* ONR will ensure that all reports required from the recipient (see §1260.75) have been received by the appropriate NASA offices.

(c) *Reports certification.* ONR will obtain from those that receive NASA reports, written certification that the reports have been satisfactorily completed. The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see §1260.135). In reviewing the certifications, see §§1260.171 and 1260.172.

(d) *Administrativly complete.* A grant is administratively complete when

(1) All reports have been received;

(2) All certifications have been received;

(3) Payments have been made for allowable reimbursable costs and refunds have been received for any balance of unobligated cash advanced that is not authorized to be retained for use on other grants; and

(4) A DD Form 1594 has been provided by ONR to the NASA grant officer.

(e) *Retention of documents.* Records will be retained in accordance with §1260.153.

## APPENDIX TO SUBPART A TO PART 1260—LISTING OF EXHIBITS

Exhibit A—Delegation of Administration

Exhibit B—Formats

Example 1—Research Grant
Example 2—Cooperative Agreement
Example 3—Training Grant
Example 4—Education Grant
Example 5—Grant or Cooperative Agreement with Foreign Organizations

EXHIBIT C—BUDGET SUMMARY

NOTE: Exhibits are available at NASA Headquarters, Code HK, Washington, DC 20546.

## Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

GENERAL

### § 1260.101 Purpose.

This subpart implements OMB Circular No. A–110 and establishes uniform administrative requirements for NASA grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. NASA shall not impose additional or inconsistent requirements, except as provided in §§ 1260.104 and 1260.114 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

### § 1260.102 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subcontractors, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means a grant or cooperative agreement that provides support or stimulation to accomplish a public purpose. Awards include research grants, training grants, facilities grants, educational grants, and cooperative agreements in the form of money or property in lieu of money, by NASA to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind of individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

(h) *Contract* means a procurement contract under an award, and a procurement subcontract under a recipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by NASA.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

(k) *Disallowed costs* means those charges to an award that NASA determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more

than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where a Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *NASA* means the National Aeronautics and Space Administration (NASA), including its authorized representatives.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when NASA funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* mean the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subcontractors. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for good and other property received, for services performed by employees, contractors, subcontractors and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 1270.24(e) and (h). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of NASA funds is not program income. Except as otherwise provided in these regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which NASA sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intellectual property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving an award directly from NASA to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subcontractors, or contractors or subcontractors of recipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also included activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold.

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph (e) of this section.

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

(hh) *Supplies* means all personal property excluding equipment, intellectual property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ii) *Suspension* means an action by NASA that temporarily withdraws NASA sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by NASA. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations,* for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by NASA that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

### §1260.103 Effect on other issuances.

For awards subject to this subpart, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this subpart shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §1260.104.

### §1260.104 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this subpart when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this subpart shall be permitted only in unusual circumstances. NASA may apply more restrictive requirements to a class of recipients when approved by OMB. NASA may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by NASA. See §1260.6(c).

### §1260.105 Subawards.

Unless sections of this subpart specifically exclude subrecipients from coverage, the provisions of this subpart shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of 14 CFR part 1273, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

## PRE-AWARD REQUIREMENTS

### §1260.110 Purpose.

Sections 1260.111 through 1260.117 prescribe forms and instructions and other pre-award matters to be used in applying for NASA awards.

### §1260.111 Pre-award policies.

(a) Use of grants and cooperative agreements, and contracts. In each instance, NASA shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the

direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. NASA shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

### § 1260.112 Forms for applying for Federal assistance.

(a) NASA shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the NASA in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use those forms and instructions prescribed by NASA in § 1260.

### § 1260.113 Debarment and suspension.

NASA and recipients shall comply with the nonprocurement debarment and suspension rule, 14 CFR part 1265, ''Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants),'' implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This rule restricts contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

### § 1260.114 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this subpart, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, NASA may impose additional requirements as needed. Such applicant or recipient will be notified in writing as to the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

### § 1260.115 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. NASA shall follow the provisions of Executive Order 12770, ''Metric Usage in Federal Government Programs.''

### § 1260.116 Resource Conservation and Recovery Act (RCRA).

Under the RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002 of the RCRA (42 U.S.C. 6962). Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

### § 1260.117 Certifications and representations.

Unless prohibited by statute or codified regulation, NASA will allow recipients to submit certain certifications and representations required

by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipient's compliance with the pertinent requirements.

POST-AWARD REQUIREMENTS

*Financial and Program Management*

**§1260.120 Purpose of financial and program management.**

Sections 1260.121 through 1260.128 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

**§1260.121 Standards for financial management systems.**

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, it should be noted that it is generally not appropriate to develop unit cost information.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §1260.152. If NASA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, NASA, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) NASA may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the Unites States.''

**§1260.122 Payment.**

(a) Payment methods shall minimize the time elapsing between the transfer

of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b)(1) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 1260.121.

(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by NASA to the recipient.

(1) Advance payments will be made by electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(d) [Reserved. Not used by NASA.]

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. NASA may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project. When the reimbursement method is used, NASA shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(f) If a recipient cannot meet the criteria for advance payments and NASA has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, NASA may provide cash on a working capital advance basis. Under this procedure, NASA shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, NASA shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subcontractor to meet the subcontractor's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, NASA will not withhold payments for proper charges made by recipients at any time during the project period unless the conditions in paragraph (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or NASA reporting requirements.

(2) The recipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, NASA may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, NASA shall not require separate depository

accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless the conditions in paragraph (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonable available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) Interest earned on Federal advances deposited in interest-bearing accounts in excess of $250 per year shall be remitted annually to Department of Health and Human Services (DHHS), Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. In accordance with 31 CFR part 206, interest should be remitted electronically through the Automated Clearing House (ACT) to DHHS. Recipients without this capability may make the remittance by check. In either case, the remittance should be payable to DHHS and should indicate the recipient's Entity Identification Number (EIN) and reason, i.e., ''Interest earned.''

(m) Except as noted elsewhere in this subpart, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. [Reserved. Not used by NASA.]

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. The SF–271 may be used for requesting reimbursement for NASA construction programs.

### §1260.123 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by NASA.

(7) Conform to other provisions of this subpart, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of NASA.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If NASA authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, NASA may approve the use of the current fair market value of the donated property, even if it exceeds the

certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if the conditions in paragraph (g) (1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that NASA has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

### § 1260.124 Program income.

(a) The standards set forth in this section shall be used to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by NASA and recipient and

used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When NASA authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the program regulations or the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in §1260.114.

(e) Unless program regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Unless program regulations or the terms and conditions of the award provide otherwise, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§1260.130 through 1260.137).

(h) Unless program regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

**§1260.125 Revision of budget and program plans.**

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon requirements in these regulations. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from NASA for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by NASA.

(6) The inclusion, unless waived by NASA, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education;'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations;'' 45 CFR part 74 appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals;'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, NASA is authorized, at its option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of NASA. All pre-award costs are incurred at the recipient's risk (i.e., NASA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipate and inadequate to cover such costs).

(2) Initiated a non-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify NASA in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless NASA provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) Program regulations may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which NASA's share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by NASA. However, no program regulation shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from NASA for budget revisions whenever the conditions in paragraphs (h)(1), (2) or (3) or this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 1260.127.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When NASA makes an award that provides support for both construction and nonconstruction work, NASA may require the recipient to request prior approval from NASA before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, NASA shall require recipients to notify NASA in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application

for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless NASA indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, NASA shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, NASA shall inform the recipient in writing of the date when the recipient may expect the decision.

### §1260.126 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

[62 FR 45939, 45940, Aug. 29, 1997]

### §1260.127 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

### §1260.128 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by NASA.

*Property Standards*

### §1260.130 Purpose of property standards.

Sections 1260.131 through 1260.137 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Recipients shall observe these standards under awards and NASA will not impose additional requirements, unless specifically required by Federal statue. The recipient may use its own property management standards and procedures provided it observes the provisions of §§1260.131 through 1260.137.

### §1260.131 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided for property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

**§ 1260.132 Real property.**

Unless otherwise provided by statue, the requirements concerning the use and disposition of real property acquired in whole or in part under awards are as follows:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of NASA.

(b) The recipient shall obtain written approval by NASA for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by NASA.

(c) When the real property is no longer needed as provided in paragraph (a) and (b), the recipient shall request disposition instructions from NASA or its successor Federal awarding agency. NASA shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for the percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by NASA and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

**§ 1260.133 Federally-owned and exempt property.**

(a) *Federally-owned property*. (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to NASA. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to NASA for further Federal agency utilization.

(2) If NASA has no further need for the property, it shall be declared excess and reported to the General Services Admiration, unless NASA has statutory authority to dispose of the property by alternative methods (e.g, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by NASA.

(b) *Exempt property*. Title to non-expendable personal property acquired with grant funds shall be vested in the recipient upon acquisition, unless it is determined that to do so is not in furtherance of the objectives of NASA. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in § 1260.27.

**§ 1260.134 Equipment.**

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether nor not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of NASA. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by NASA, then

(2) Activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by NASA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by NASA. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of NASA.

(f) The recipients's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates NASA for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify NASA.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation

is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from NASA. NASA shall determine whether the equipment can be used to meet NASA's requirements. If no requirement exists within NASA, the availability of the equipment shall be reported to the General Services Administration by NASA to determine whether a requirement for the equipment exists in other Federal agencies. NASA shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse NASA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by NASA for such costs incurred in its disposition.

(4) NASA may reserve the right to transfer the title to the Federal Government or to a third party named by NASA when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) NASA shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If NASA fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

### § 1260.135 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

### § 1260.136 Intangible property.

(a) The recipient may assert copyright in any work that is subject to copyright and was created, or for which copyright ownership was purchased, under an award. NASA is granted a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) NASA has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intellectual property and debt instruments acquired under an award or subcontract vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of NASA. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of §1260.134(g).

(e) Due to the substantial involvement on the part of NASA under a cooperative agreement, intellectual property may be produced by Federal employees and NASA contractors tasked to perform NASA assigned activities. Title to intellectual property created under the cooperative agreement by NASA or its contractors will initially vest with the creating party. Certain rights may be exchanged with the recipient.

### §1260.137 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. NASA may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

*Procurement Standards*

### §1260.140 Purpose of procurement standards.

Sections 1260.141 through 1260.148 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by NASA upon recipients, unless specifically required by Federal statute or executive order or approved in accordance with the deviation procedures of §1260.6.

### §1260.141 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to NASA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

### §1260.142 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest

in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

### § 1260.143 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

### § 1260.144 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that the conditions in paragraphs (a) (1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of NASA awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 14 CFR part 1265, the implementation of Executive Order 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for NASA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in NASA's implementation of this Regulation.

(2) The procurement is expected to exceed the small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

### §1260.145 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

### §1260.146 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum.

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

### §1260.147 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

### §1260.148 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, NASA may accept the bonding policy and requirements of the recipient, provided the NASA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this subpart, as applicable.

*Reports and Records*

### § 1260.150 Purpose of reports and records.

Sections 1260.151 through 1260.153 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

### § 1260.151 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subcontract, function or activity supported by the award. Recipients shall monitor subcontracts to ensure subcontractors have met the audit requirements as delineated in § 1260.126.

(b) The terms and conditions of the award shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 1260.151(f), performance reports shall not be required more frequently

than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. NASA may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify NASA of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) NASA may make site visits, as needed.

(h) NASA shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

### §1260.152 Financial reporting.

(a) When funds are advanced to recipients, each recipient is required to submit the SF–272, Report of Federal Cash Transactions, and, when necessary, its continuation sheet, SF 272a. NASA uses this report to monitor cash advanced to the recipient and obtain disbursement information for each agreement with the recipient.

(b) NASA requires forecasts of the recipient's cash requirements for each of the four months following the quarter being reported, in the ''Remarks'' section of the report.

(c) Recipients are required to submit the original of the report for the Financial Management Office of the NASA Center which issued the agreement 15 working days following the end of each Federal fiscal quarter. Copies will be furnished to the appropriate grants officer (see §1260.26(c)).

### §1260.153 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. NASA shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by NASA. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transfered to or maintained by NASA, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in section 1260.153(g).

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall place no restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records have belonged to NASA.

(g) Indirect cost rate proposals, cost allocations plan, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to NASA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

*Termination and Enforcement*

### § 1260.160 Purpose of termination and enforcement.

Sections 1260.161 and 1260.162 set forth uniform suspension, termination and enforcement procedures.

### § 1260.161 Termination.

(a) Awards may be terminated in whole or in part only if the conditions in paragraph (a)(1), (2) or (3) of this section apply.

(1) By NASA, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By NASA with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to NASA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if NASA determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) or this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 1260.171(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

**§1260.162 Enforcement.**

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, NASA may, in addition to imposing any of the special conditions outlined in §1260.114, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by NASA.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, NASA shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statue or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless NASA expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the conditions in paragraphs (c) (1) and (2) of this section apply.

(1) The costs results from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.'s 12549 and 12689 and 14 CFR part 1265 (see Section 1260.113).

AFTER-THE-AWARD REQUIREMENTS

**§1260.170 Purpose.**

Sections 1260.171 through 1260.173 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

**§1260.171 Closeout procedures.**

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. NASA may approve extensions when requested by the recipient.

(b) Unless NASA authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) NASA shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that NASA has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, NASA shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§1260.131 through 1260.137.

(g) In the event a final audit has not been performed prior to the closeout of an award, NASA shall retain the right to recover an appropriate amount after fully considering the recommendations

on disallowed costs resulting from the final audit.

### § 1260.172 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of NASA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 1260.126.

(4) Property management requirements in §§ 1260.131 through 1260.137.

(5) Records retention as required in § 1260.153.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the NASA and the recipient, provided the responsibilities of the recipient referred to in § 1260.173(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

### § 1260.173 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, NASA may reduce the debt by the provisions of paragraph (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, NASA shall charge interest on an overdue debt in accordance with 4 CFR chapter II, ''Federal Claims Collection Standards.''

## APPENDIX A TO SUBPART B OF PART 1260—CONTRACT PROVISIONS

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with Executive Order 11246; ''Equal Employment Opportunity,'' as amended by Executive Order 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts in excess of $2,000 for construction or repair awarded by recipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the NASA.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of

$2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

# PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

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AUTHORITY: Subparts 1261.4, 1261.5, and 1261.6 issued under 42 U.S.C. 2473(c); 31 U.S.C. 3711 *et seq.;* 5 U.S.C. 5514; 4 CFR parts 101–105; 5 CFR part 550 subpart K, §§ 550.1101–550.1107.

SOURCE: 45 FR 48104, July 18, 1980, unless otherwise noted.

## Subpart 1261.1—Employees' Personal Property Claims

AUTHORITY: 31 U.S.C. 2371, et seq.

### § 1261.100 Scope of subpart.

This subpart prescribes regulations governing the settlement of claims against the National Aeronautics and Space Administration (NASA) for damage to, or loss of, personal property incident to service with NASA.

### § 1261.101 Claimants.

(a) A claim for damage to, or loss of, personal property incident to service with NASA may be made only by:

(1) An officer or employee of the National Aeronautics and Space Administration;

(2) A member of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey and Public Health Service) assigned to duty with or under the jurisdiction of NASA;

(3) The authorized agent or legal representative of a person named in paragraph (a)(1) or (2) of this section; or

(4) The survivors of a person named in paragraph (a)(1) or (2) of this section in the following order of precedence: Spouse; children, father or mother, or both; or brothers or sisters, or both. Claims by survivors may be allowed whether arising before, concurrently with, or after the decedent's death, if otherwise covered by this subpart.

(b) Employees of contractors with the United States and employees of nonappropriated fund activities are not included within the meaning of paragraph (a)(1) or (2) of this section.

(c) Claims may not be made by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

**§1261.102 Maximum amount.**

From October 1, 1982, to October 30, 1988, the maximum amount that may be paid under the Military Personnel and Civilian Employees' Claim Act of 1964, as amended (31 U.S.C. 3721) is $25,000, and on or after October 31, 1988, the maximum amount is $40,000 (Pub. L. 100–565, 102 Stat. 2833, October 31, 1988).

[54 FR 35456, Aug. 28, 1989]

**§1261.103 Time limitations.**

(a) A claim may be allowed only if the claim is presented in writing within 2 years after it accrues. For the purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage is or should have been discovered by the claimant through the exercise of due diligence.

(b) If a claim accrues in time of war or if an armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier. The dates of beginning and ending of such an armed conflict are the dates established by concurrent resolution of the Congress or by a determination of the President.

**§1261.104 Allowable claims.**

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, the claimant's agent, private employee, or family member (the standard to be applied is that of reasonable care under the circumstances);

(2) The possession of the property lost or damaged and the quantity is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with NASA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless excluded by §1261.105.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or provided by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or provided by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office working area, hospital, or other place authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *House trailers.* Claims may be allowed for damage to, or loss of, house trailers and their contents under the provisions of paragraph (c)(2) of this section.

(4) *Negligence of the Government.* Claims may be allowed for damage to, or loss of, property caused by the negligence or wrongful act or omission of any employee of the Government while acting within the scope of office or employment.

(5) *Enemy action or public service.* Claims may be allowed for damage to,

or loss of, property as a direct consequence of:

(i) Enemy action or threat of action or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(6) *Property used for benefit of the Government.* Claims may be allowed for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of, an authorized official.

(7) *Clothing and accessories.* Claims may be allowed for damage to, or loss of, clothing or accessories customarily worn on the person, such as eyeglasses, hearing aids or dentures.

### § 1261.105 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Claims may not be allowed for property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to claimant or provided in kind by the United States.

(b) *Money or currency.* Claims may not be allowed for loss of money or currency, except when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by paragraph (a)). Reimbursement for loss of money or currency is limited to an amount which is determined reasonable to have been in the claimant's possession at the time of the loss.

(c) *Government property.* Claims may not be allowed for property owned by the United States, except that for which the claimant is financially responsible to any agency of the Government other than NASA.

(d) *Business property.* Claims may not be allowed for property used in a private business enterprise.

(e) *Articles of extraordinary value.* Claims may not be allowed for valuable articles, such as cameras, watches, jewelry, furs; or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked: *Provided,* That reasonable protection or security measures have been taken by claimant.

(f) *Unserviceable property.* Claims may not be allowed for worn-out unserviceable property.

(g) *Illegal possession.* Claims may not be allowed for property acquired, possessed, or transported in violation of law or in violation of applicable regulations or directives.

(h) *Estimate fees.* Claims may not include fees paid to obtain estimates or repair, except when it is clear that an estimate could not have been obtained without paying a fee.

(i) *Automobiles and other vehicles.* Claims may not be allowed for damage to, or loss of, automobiles and other vehicles unless:

(1) The vehicles were required to be used for official Government business (official Government business, as used here, does not include travel between quarters and place of duty, parking of vehicles incident to such travel, or use of vehicles for the convenience of the owner); or

(2) Shipment of motor vehicles to, from, or between overseas areas was being furnished or provided by the Government; or

(3) The damage or loss was caused by the negligent or wrongful act or omission of any employee of the Government acting within the scope of office or employment.

### § 1261.106 Submission of claims.

All claims shall be submitted in duplicate to the Administrator or designee on NASA Form 1204, ''Employee's Claim for Damage to, or Loss of, Personal Property Incident to Service.''

### § 1261.107 Evidence in support of claim.

(a) *General.* In addition to the information required on NASA Form 1204, and any other evidence required by the Administrator or designee, the claimant will furnish the following evidence when relevant:

(1) A corroborating statement from the claimant's supervisor or other person or persons having personal knowledge of the facts concerning the claim.

(2) A statement of any property recovered or replaced in kind.

(3) An itemized bill of repair for property which has been repaired, or one or more written estimates of the cost of repairs from competent persons if the property is repairable but has not been repaired.

(b) *Specific classes of claims.* Claims of the following types shall also be accompanied with specific and detailed evidence as indicated:

(1) *Theft, burglary, etc.* A statement describing in detail the location where the loss occurred and the facts and circumstances surrounding the loss, including supporting documentation, e.g., a police report.

(2) *Transportation losses.* A copy of orders authorizing the travel, transportation or shipment, or a certificate explaining the absence of such orders and stating their substance; all bills of lading and inventories of property shipped; and a statement indicating the condition of the property when turned over to the carrier and when received from the carrier.

### §1261.108 Recovery from carriers, insurers, and other third parties.

(a) *General.* NASA is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid large losses or losses which may not be recoverable from NASA. The procedures set forth in this section are designed to enable the claimant to obtain the maximum amount of compensation for personal property loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim.

(b) *Demand on carrier, contractor, warehouse owner/operator, or insurer.* When it appears that property has been damaged or lost under circumstances in which a carrier, warehouse owner/operator, contractor or insurer may be responsible, the claimant shall make a written demand on such party, either before or after submitting a claim against NASA. The Administrator or designee, if requested, will assist in making demand on the third party. No such demand need be made if, in the opinion of the Administrator or designee, it would be impracticable or any recovery would be insignificant, or if circumstances preclude the claimant from making timely demand.

(c) *Action subsequent to demand.* A copy of the demand and of any related correspondence shall be submitted to the Administrator or designee. If the carrier, insurer, or other third party offers a settlement which is less than the amount of the demand, the claimant shall consult with the Administrator or designee before accepting the amount offered. The claimant shall also notify the Administrator or designee promptly of any other action by a third party, including settlement, partial settlement, or denial of liability.

(d) *Application of recovery.* When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart. When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of total loss subject to the maximum set forth in §1261.102.

(e) *Transfer of rights.* The claimant shall assign to the United States, to the extent of any payment accepted on a claim, all rights, title, and interest in any claim he/she may have against any carrier, insurer, or other party arising out of the accident or incident on which the claim against the United States is based. The claimant shall also, upon request, furnish such evidence and other cooperation as may be required to enable the United States to enforce the claim. After payment on the claim by the United States, the claimant shall, upon receipt of any payment from a carrier, insurer, or other party, notify the Admininstrator or designee and pay the proceeds to the United States to the extent required under the provisions of paragraph (d).

### § 1261.109 Computation of allowance.

(a) The amount allowed for damage to or loss of any item of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange). There will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable: Provided, That the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss, with appropriate recognition of current replacement value.

(c) *Limitation on agent or attorney fees.* No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled shall be paid or delivered to or received by an agent or attorney on account of services rendered in connection with that claim, any contract to the contrary notwithstanding (31 U.S.C. 243).

### § 1261.110 Settlement of claims.

(a) *Settlement officials.* (1) Claims in the amount of $5,000 or more will be acted upon by the General Counsel. Claims less than $5,000 will be acted upon by the Chief Counsel of the NASA Field Installation where the employee was assigned at the time of the loss or damage or the Assistant General Counsel for Litigation for NASA Headquarters claims.

(2) Claims arising for $5,000 or more shall be investigated by the Chief Counsel or Assistant General Counsel for Litigation, as appropriate, and a report and recommendation thereon shall be forwarded to the General Counsel.

(b) *Action by settlement official.* (1) For each claim, the settlement official shall complete a report in duplicate on NASA Form 1204 and retain a claim file consisting of the original claim, the report, and any other relevant evidence or documents.

(2) When a claim is allowed in an amount acceptable to the claimant, the settlement official shall prepare a ''Voucher for Payment of Employees' Personal Property Claims'' (NASA Form 1220), have it properly executed by the claimant, and forward it with a copy of the approved claim (NASA Form 1204) to the appropriate NASA fiscal or financial management office for payment.

(3) When a claim is disallowed or is partially allowed in an amount unacceptable to the claimant, the settlement official shall notify the claimant in writing of the action taken and the reasons therefor. If not satisfied with the action taken, the claimant may, within 60 days after receipt of such notice, request reconsideration of the claim and may submit any new evidence that he/she feels to be pertinent to the claim. If such a claim has been disallowed at the field installation level, the claimant may request reconsideration by the field installation, or by the General Counsel, or both.

(c) *Final and conclusive.* The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

## Subpart 1261.2 [Reserved]

## Subpart 1261.3—Claims Against NASA or Its Employees for Damage to or Loss of Property or Personal Injury or Death—Accruing On or After January 18, 1967

AUTHORITY: 28 U.S.C. 2671–2680, 42 U.S.C. 2473(c)(13), and 28 CFR part 14.

### § 1261.300 Scope of subpart.

This subpart sets forth the procedures for:

(a) The submission of, and action by NASA upon, claims against the United States arising out of the activities of NASA for damage to or loss of property

or personal injury or death, and designates the NASA officials authorized to act upon such claims.

(b) The handling of lawsuits against NASA employee(s) for damage to or loss of property or personal injury or death resulting from a NASA employee's activities within the scope of his/her office or employment.

**§1261.301 Authority.**

(a) Under the provisions of the Federal Tort Claims Act, as amended (see 28 U.S.C. 2671–2680), and subject to its limitations, the Administrator or designee is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any NASA employee while acting within the scope of his/her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. In exercising such authority, the Administrator or designee is required to act in accordance with regulations prescribed by the Attorney General (28 CFR part 14). An award, compromise, or settlement in excess of $25,000 may be effected only with the prior written approval of the Attorney General or designee.

(b) Under sec. 203(c)(13)(A) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473(c)(13)(A), NASA is authorized to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for $25,000 or less against the United States for bodily injury, death or damage to or loss of real or personal property resulting from the conduct of NASA's functions as specified in 42 U.S.C. 2473(a). At the discretion of NASA, a claim may be settled and paid under this authority even though the United States could not be held legally liable to the claimant.

(c) Under 42 U.S.C. 2473(c)(13)(B), if NASA considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 42 U.S.C. 2473(c)(13)(A), NASA may report the facts and circumstances of the claim to the Congress for its consideration or to the Comptroller General as provided in the ''Supplemental Appropriations Act, 1978,'' Pub. L. 95–240 (92 Stat. 107), 31 U.S.C. 724a.

(d) Under 28 U.S.C. 2679, the Attorney General of the United States shall defend any civil action or proceeding brought in any court against a Government employee for injury or loss of property or personal injury or death, resulting from the operation of a motor vehicle by the Government employee while acting within the scope of office or employment. In effect, this legislation is designed to protect an employee driving a motor vehicle on Government business by converting such a civil court action or proceeding against the employee into a claim against the United States: Provided, That the employee was acting within the scope of employment at the time of the accident. The remedy against the United States provided by 28 U.S.C. 2672 (administrative adjustment of claims) and 28 U.S.C. 1346(b) (civil action against the United States) then becomes the plaintiff's exclusive remedy.

**§1261.302 Claim.**

Unless the context otherwise requires, *claim* means a claim for money damages against the United States arising out of the activities of NASA, for injury or loss of property, or personal injury or death. A claim ''arises'' at the place where the injury, loss, or death occurs.

**§1261.303 Claimant.**

(a) A claim for damage to or loss of property may be presented by the owner of the property, duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor(rix) or administrator(rix) of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights

of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing and be accompanied by evidence of the agent's or legal representative's authority to present a claim on behalf of the claimant as agent, executor(rix), administrator (rix), parent, guardian, or other representative.

### § 1261.304 Place of filing claim.

A claim arising in the United States should be submitted to the Chief Counsel of the NASA Installation whose activities are believed to have given rise to the claimed injury, loss, or death. If the identity of such installation is not known, or if the claim arose in a foreign country, the claim should be submitted to the General Counsel, National Aeronautics and Space Administration, Washington, DC 20546.

### § 1261.305 Form of claim.

(a) The official designated in § 1261.308 shall, prior to acting on a claim, require the claimant to submit a completed Standard Form 95—''Claim for Damage, Injury or Death.''

(b) NASA installations will furnish copies of Standard Form 95 upon request.

### § 1261.306 Evidence and information required.

(a) The circumstances alleged to have given rise to the claim, and the amount claimed, should, so far as possible, be substantiated by competent evidence. Supporting statements, estimates, and the like should, if possible, be obtained from disinterested parties. For specific guidance as to Federal Tort Claims Act claims, see Department of Justice regulations on ''Administrative Claims under Federal Tort Claims Act'' at 28 CFR part 14.

(b) In addition to the evidence and information required under paragraph (a), any claimant shall be required to submit information as to the amount of money or other property received as damages or compensation, or which the claimant may be entitled to receive, by reason of the claimed injury, loss, or death from persons other than NASA or NASA employees. (Such persons include, but are not limited to, insurers, employers, and persons whose conduct was a cause of the accident or incident.)

(c) Any document in other than the English language should be accompanied by an English translation.

### § 1261.307 Time limitations.

(a) A claim may not be acted upon pursuant to the Federal Tort Claims Act unless it is presented to NASA within 2 years after it accrued.

(b) A claim may not be acted upon pursuant to 42 U.S.C. 2473(c)(13)(A) or (B) unless it is presented to NASA within 2 years after the occurrence of the accident or incident out of which the claim arose.

(c) A claim shall be deemed to have been presented to NASA when NASA receives from a claimant or duly authorized agent or legal representative an executed Standard Form 95 or other written notification of an incident or accident, accompanied by a claim in a sum certain.

### § 1261.308 NASA officials authorized to act upon claims.

(a) Claims in the amount of $10,000 or more will be acted upon as directed by the General Counsel;

(b) Claims less than $10,000 will be acted upon by the Chief Counsel of the NASA Field Installation where the employee was assigned at the time of the loss or damage or the Assistant General Counsel for Litigation for NASA Headquarters claims.

(c) Claims of $10,000 or more, pursuant either to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13), shall be acted upon only with the prior approval of the General Counsel. Such claims shall be forwarded to the General Counsel for approval, if the Chief Counsel or the Assistant General Counsel for Litigation is of the opinion that the claim may be meritorious and otherwise suitable for settlement under any authority. A claim so forwarded

should be accompanied by a report of the facts of the claim, based upon such investigation as may be appropriate, and a recommendation as to the action to be taken.

(d) Claims acted upon by NASA officials pursuant to this section shall be acted upon pursuant to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13)(A) or (B), as the NASA official deems appropriate.

### §1261.309 Action under the Federal Tort Claims Act.

Where a claim is to be acted upon pursuant to the Federal Tort Claims Act, action shall be taken in accordance with 28 U.S.C. 2672, other provisions of the Federal Tort Claims Act as may be applicable (e.g., 28 U.S.C. 2680), and regulations prescribed by the Attorney General which appear at 28 CFR part 14.

### §1261.310 Investigation of claims.

The officials designated in §1261.308 shall conduct such investigation of a claim as deemed appropriate. The officials may request any NASA office or other Federal agency to assist in the investigation.

### §1261.311 Claims requiring Department of Justice approval or consultation.

(a) When in the opinion of the NASA official designated in §1261.308, Department of Justice approval or consultation may be required, pursuant to 28 CFR part 14, in connection with a claim being acted upon under the Federal Tort Claims Act, the following papers shall be forwarded to the General Counsel:

(1) A short and concise statement of the facts of the claim.

(2) Copies of all relevant portions of the claim file.

(3) A statement of the recommendations or views of the forwarding official.

(b) A claim forwarded to the General Counsel in accordance with paragraph (a) of this section, or upon which the General Counsel is acting pursuant to §1261.308(c), shall be referred to the Department of Justice when, in the opinion of the General Counsel, Department of Justice approval or consultation is required or may be appropriate.

### §1261.312 Action on approved claims.

(a) Upon settlement of a claim, the official designated in §1261.308 will prepare and have executed by the claimant a Voucher for Payment of Tort Claims (NASA Form 616) if the claim has been acted upon pursuant to 42 U.S.C. 2473(c)(13), or a Voucher for Payment under Federal Tort Claims Act (Standard Form 1145) if the claim has been acted upon pursuant to the Federal Tort Claims Act. The form will then be referred to the cognizant NASA installation fiscal or financial management office for appropriate action.

(b) When a claimant is represented by an attorney, both the claimant and attorney will be designated as ''payees'' on the voucher, and the check will be delivered to the attorney whose address shall appear on the voucher.

(c) Acceptance by the claimant, agent, or legal representative, of any award, compromise, or settlement made pursuant to this subpart shall be final and conclusive on the claimant, agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

### §1261.313 Required notification in the event of denial.

Final denial of a claim shall be in writing and shall be sent to the claimant, the attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that if the claimant is dissatisfied with NASA's action, the claimant may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing the notification.

**§ 1261.314 [Reserved]**

**§ 1261.315 Procedures for the handling of lawsuits against NASA employees arising within the scope of their office or employment.**

The following procedures shall be followed in the event that a civil action or proceeding is brought, in any court, against any employee of NASA (or against the estate) for injury or loss of property or personal injury or death, resulting from the NASA employee's activities while acting within the scope of office or employment:

(a) After being served with process or pleadings in such an action or proceeding, the employee (or the executor(rix) or administrator(rix) of the estate) shall immediately deliver all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the accident giving rise to the court action or proceeding, to the following officials:

(1) The Assistant General Counsel for Litigation insofar as actions or proceedings against employees of NASA Headquarters are concerned; or

(2) The Chief Counsel of the NASA Installation at which the employee is employed, insofar as actions against other than NASA Headquarters employees are concerned.

(b) Upon receipt of such process and pleadings, the Assistant General Counsel for Litigation or the Chief Counsel of the NASA Installation receiving the same shall furnish to the U.S. Attorney for the district embracing the place where the action or proceeding is brought and, if appropriate, the Director, Torts Branch, Civil Division, Department of Justice, the following:

(1) Copies of all such process and pleadings in the action or proceeding promptly upon receipt thereof; and

(2) A report containing a statement of the circumstances of the incident giving rise to the action or proceeding, and all data bearing upon the question of whether the employee was acting within the scope of office or employment with NASA at the time of the incident, at the earliest possible date, or within such time as shall be fixed by the U.S. Attorney upon request.

(c) The Assistant General Counsel for Litigation or a Chief Counsel acting pursuant to paragraph (b) of this section shall submit the following documents to the General Counsel, who is hereby designated to receive such documents on behalf of the Administrator:

(1) Copies of all process and pleadings submitted to a U.S. Attorney in accordance with paragraph (b).

(2) In addition, where the action or proceeding is for damages in excess of $25,000, or where (in the opinion of the Chief Counsel) such action or proceeding involves a new precedent, a new point of law, or a question of policy, copies of reports and all other papers submitted to the U.S. Attorney.

**§ 1261.316 Policy.**

(a) The National Aeronautics and Space Administration may indemnify a present or former NASA employee, who is personally named as a defendant in any civil suit in state or Federal court, or in an arbitration proceeding or other proceeding seeking damages against that employee personally, for any verdict, judgment, appeal bond, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, appeal bond, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the National Aeronautics and Space Administration, as determined by the Administration or designee.

(b) The National Aeronautics and Space Administration may settle or compromise a personal damage claim against a present or former NASA employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the National Aeronautics and Space Administration, as determined by the Administrator or designee.

(c) Absent exceptional circumstances as determined by the Administrator or designee, the agency will not entertain a request either to agree to indemnify or to settle a personal damage claim

before entry of an adverse verdict, judgment, or award.

(d) A present or past NASA employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, appeal bond, award, or settlement proposal to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the agency shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Administrator for decision.

(e) Any payment under this section either to indemnify a National Aeronautics and Space Administration employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the National Aeronautics and Space Administration.

[53 FR 27482, July 21, 1988]

### §1261.317 Attorney-client privilege.

(a) Attorneys employed by the National Aeronautics and Space Administration participate in the process utilized for the purpose of determining whether the agency should request the Department of Justice to provide representation to a present or former agency employee sued, subpoenaed, or charged in his/her individual capacity, and attorneys employed by the National Aeronautics and Space Administration provide assistance in obtaining representation of such an agency employee. In these roles, agency attorneys undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, National Aeronautics and Space Administration attorneys who assist in the representation of a present or former employee also undertake a full and traditional attorney-client relationship with that employee with respect to the attorney-client privilege.

(b) Any adverse information communicated by the client-employee to an agency attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the National Aeronautics and Space Administration, other than attorneys resonsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided and even though representation may be denied or discontinued.

[53 FR 27483, July 21, 1988]

## Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

SOURCE: 52 FR 19487, May 26, 1987, unless otherwise noted.

### §1261.400 Scope of subpart.

(a) These regulations do the following:

(1) Prescribe standards for the administrative collection, compromise, suspension or termination of collection, and referral to the General Accounting Office (GAO), and/or to the Department of Justice (DJ) for litigation, of civil claims as defined by 31 U.S.C. 3701(b), arising out of the activities of NASA;

(2) Designate the responsible NASA officials authorized to effect actions hereunder; and

(3) Require compliance with the GAO/DJ joint regulations at 4 CFR parts 101 through 105 and the Office of Personnel Management (OPM) regulations at 5 CFR part 550, subpart K.

(b) Failure to comply with any provision of the GAO/DJ or OPM regulations shall not be available as a defense to any debtor (4 CFR 101.8).

(c) These regulations do not include any claim based in whole or in part on violation of the anti-trust laws; any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim; tax claims; or Federal interagency claims (4 CFR 101.3).

**§ 1261.401 Definitions.**

(a) *Claim and debt.* The terms denote a civil claim arising from the activities of NASA for an amount of money, or return or value of property (see 4 CFR 101.5), owing to the United States from any person, organization, or entity, except another Federal agency. The words *claim* and *debt* have been used interchangeably and are considered synonymous.

(b) *Delinquent debt.* The debt is *delinquent* if it has not been paid by the date specified in the initial written notification (e.g., § 1261.407) or applicable contractual agreement, unless other acceptable (to NASA) payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy an obligation under the payment agreement.

(c) *Referral for litigation.* Referral through the NASA installation's legal counsel to the Department of Justice (Main Justice or the United States Attorney, as appropriate) for legal proceedings.

**§ 1261.402 Delegation of authority.**

The following NASA officials are delegated authority, as qualified by § 1261.403, to take such action as is authorized by these regulations to collect, compromise, suspend/terminate collection, and upon consultation with and through legal counsel, to refer the claim (as applicable) to the GAO or Department of Justice:

(a) For field installations, with regard to subpart 1261.4 and subpart 1261.5: The Director of the Installation or a designee who reports directly to the Installation Director. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(b) For Headquarters, with regard to subpart 1261.4 and subpart 1261.5: The Associate Administrator for Management or a designee who reports directly to the Associate Administrator for Management. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(c) With respect to the analysis required by § 1261.413: The NASA Comptroller or designee.

(d) NASA wide, with regard to subpart 1261.6: The NASA Comptroller or designee.

(e) NASA wide, for complying with pertinent provisions under these regulations for agency hearing or review (see §§ 1261.408(b), 1261.503, and 1261.603(c)): The NASA General Counsel or designee.

**§ 1261.403 Consultation with appropriate officials; negotiation.**

(a) The authority pursuant to § 1261.402 to determine to forego collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $20,000, exclusive of interest and related charges, to compromise a claim or to refrain from doing so, or to refrain from, suspend or terminate collection action, shall be exercised only after consultation with legal counsel for the particular installation and the following NASA officials or designees, who may also be requested to negotiate the appropriate agreements or arrangements with the debtor:

(1) With respect to claims against contractors or grantees arising in connection with contracts or grants—the contracting officer and the financial management officer of the installation concerned.

(2) With respect to claims against commercial carriers for loss of or damage to NASA freight shipment—the cognizant transportation officers or the official who determined the amount of the claim, as appropriate, and the financial management officers of the installation concerned.

(3) With respect to claims against employees of NASA incident to their employment—the personnel officer and the financial management officer of the installation concerned.

(b) The appropriate counsel's office shall review and concur in the following:

(1) All communications to and agreements with debtors relating to claims collection.

(2) All determinations to compromise a claim, or to suspend or terminate collection action.

(3) All referrals of claims, other than referrals to the Department of Justice pursuant to § 1261.404(b)(1).

(4) All documents releasing debtors from liability to the United States.

(5) All other actions relating to the collection of a claim which in the opinion of the official designated in or pursuant to §1261.402 may affect the rights of the United States.

### §1261.404 Services of the Inspector General.

(a) At the request of an official designated in or pursuant to §1261.402, the Office of the Inspector General will, where practicable, conduct such investigations as may assist in the collection, compromise, or referral of claims of the United States, including investigations to determine the location and financial resources of the debtors.

(b) Any claim which, in the opinion of an official designated in or pursuant to §1261.402 or §1261.403, may indicate fraud, presentation of a false claim, or misrepresentation, on the part of the debtor or any other party having an interest in the claim, shall be referred by the designated official to the Inspector General (IG), NASA Headquarters, or to the nearest office of the NASA IG. After an investigation as may be appropriate, the IG shall:

(1) Notice the official, from whom the claim was received, of the findings and refer the claim to the Department of Justice in accordance with the provisions of 4 CFR 101.3; or

(2) If it were found that there is no such indication of fraud, the presentation of a false claim, or misrepresentation, return the claim to the official from whom it was received.

### §1261.405 Subdivision of claims not authorized; other administrative proceedings.

(a) *Subdivision of claims.* Claims may not be subdivided to avoid the $20,000 ceiling, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§1261.414) or suspension or termination of collection (§1261.416). The debtor's liability arising from a particular transaction or contract shall be considered a single claim (4 CFR 101.6).

(b) Required administrative proceedings. Nothing contained in these regulations is intended to require NASA to omit, foreclose, or duplicate administrative proceedings required by contract or other applicable laws and implementing regulations (4 CFR 101.7).

### §1261.406 Aggressive collection action; documentation.

(a) NASA shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of NASA activities, and to cooperate with the other Federal agencies in debt collection activities.

(b) All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation, including the Claims Collection Litigation Report under §1261.417(e), should be retained in the appropriate claims file.

### §1261.407 Demand for payment; limitation periods.

(a) Appropriate written demands shall be made promptly upon a debtor of the United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, NASA will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of:

(1) The basis for the indebtedness and whatever rights the debtor may have to seek review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (§ 1261.412); and

(3) The date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand delivered. The responsible official should exercise care to ensure that demand letters are mailed or hand delivered on the same day that they are actually dated. Apart from these requirements, there is no prescribed format for demand letters. However, as appropriate to the circumstances, the responsible official may consider including, either in the initial demand letter or in subsequent letters, such items the NASA's willingness to discuss alternative methods of payment, or intentions with respect to referral of the debt to the Department of Justice for litigation.

(c) NASA should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(d) If either prior to the initiation of, any time during, or after completion of the demand cycle, a determination to pursue offset is made, then the procedures specified in subparts 1261.5 and 1261.6, as applicable, should be followed. The availability of funds for offset and NASA's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of § 1261.502 or § 1261.603(a), as applicable.

(e) NASA should undertake personal interviews with its debtors whenever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors; and may attempt to effect compromise of the claim in accordance with § 1261.414.

(f) When a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with subpart 1261.6, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222, May 8, 1965, 30 FR 6469, which provides that: ''An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law'' (4 CFR 102.81).

### § 1261.408 Use of consumer reporting agency.

(a) The term *consumer reporting agency* has the meaning provided in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)):

(1) A consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f); or

(2) A person that, for money or on a cooperative basis, regularly—

(i) Gets information on consumers to give the information to a consumer reporting agency; or

(ii) Serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(b) NASA Headquarters Financial Management Division, shall be the focal contact between NASA and consumer reporting agencies. The following procedures shall apply when such agencies are employed by NASA:

(1) After the appropriate notice pursuant to 5 U.S.C. 552a(e)(4) has been published, NASA may disclose, in accordance with 5 U.S.C. 552a(b)(12), information about a debtor to a consumer reporting agency. Such information may include:

(i) That a claim has been determined to be valid and is overdue (including violation by debtor of a repayment plan or other claim settlement agreement);

(ii) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual responsible for the claim;

(iii) Amount, status, and history of the claim;

(iv) Program or pertinent activity under which the claim arose.

(2) Before disclosing the information specified in paragraph (b)(1) of this section, NASA shall comply with 31 U.S.C. 3711(f) by:

(i) Taking reasonable action to locate the individual if a current address is not available;

(ii) If a current address is available, noticing the individual by certified mail, return receipt requested, that: The designated NASA official has reviewed the claim and determined that it is valid and overdue; within not less than 60 days after sending this notice, NASA intends to disclose to a consumer reporting agency the specific information to be disclosed under paragraph (b)(1) of this section; the individual may request a complete explanation of the claim, dispute the information in the records of NASA about the claim, and file for an administrative review or repeal of the claim or for reconsideration of the initial decision on the claim.

(3) If an administrative review or reconsideration is requested, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for an impartial review and determination by counsel or designee based on the entire written record. If the reviewer cannot resolve the question of indebtedness based upon the available documentary evidence, verified written statements by the debtor or the responsible official may be requested on any pertinent matter not addressed by the available record.

(c) If the information is to be submitted to a consumer reporting agency, the responsible official shall obtain a verified statement from such agency which gives satisfactory assurances that the particular agency is complying with all laws of the United States related to providing consumer credit information; and thereafter ensure that the consumer reporting agency is promptly informed of any substantial change in the condition or amount of the claim, or, on request of such agency, promptly verify or correct information about the claim.

**§1261.409 Contracting for collection services.**

(a) When NASA determines that there is a need to contract for collection services, the following conditions must attach:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation must be retained by NASA.

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices—for example, the Fair Debt Collection Practices Act (15 U.S.C. 1692), and 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to collection actions and related reports, current address of debtor, and reasonably current credit information upon returning an account to NASA for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) NASA may fund a collection service contract on a fixed-fee basis—that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. However, such contract may be entered into only if and to the extent provided in the appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute. Accordingly, payment of the fixed-fee must be charged to available agency appropriations. See 4 CFR 102.6(b)(1) and (3).

(2) NASA may also fund a collection service contract on a contingent-fee basis—that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice. See 4 CFR 102.6(b)(2).

(3) Except as authorized under paragraph (b)(2) of this section, or unless otherwise specifically provided by law, NASA must deposit all amounts recovered under collection service contracts (or by NASA employees on behalf of the agency) in the Treasury Department as miscellaneous receipts pursuant to 31 U.S.C. 3302. See 4 CFR 102.6(b)(4).

### § 1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.

(a) In seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance, NASA will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In the case of a contractor under 48 CFR chapter 18, NASA will comply with the debarment, suspension, and ineligibility requirements of the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) at 48 CFR 1809.4. Likewise, in making, guaranteeing, insuring, acquiring, or participating in loans, NASA will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower, or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 must be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

(b) If NASA is holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, it should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. NASA will provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by applicable contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

### § 1261.411 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest penalties, and administrative costs as required by § 1261.412, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Debtors who represent that they are unable to pay the debt in one lump sum must submit financial statements. If NASA agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the claim is unsecured, an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, should be obtained from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment

notes, the debtor should be provided with written explanation of the consequences of signing the note, and documentation should be maintained sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. NASA, at its option, may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

**§1261.412 Interest, penalties, and administrative costs.**

(a) Pursuant to 31 U.S.C. 3717, NASA shall assess interest, penalties, and administrative costs on debts owed to the United States. Before assessing these charges, NASA must mail or hand deliver a written notice to the debtor explaining the requirements concerning the charges (see §1261.407(b)).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an ''advance billing'' procedure is used—that is, a bill is mailed before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Designated officials should exercise care to ensure that the notices required by this section are dated and mailed or hand delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. NASA may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, NASA may set a new interest rate which reflects the current value of funds to the Treasury Department at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) NASA shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in §1261.401(b). Calculations of administrative costs should be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) NASA shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in §1261.401(b) for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) NASA must waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. NASA may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, NASA may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs (assessed under this section) under the criteria specified in § 1261.414 relating to the compromise of claims (without regard to the amount of the debt), or if NASA determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. See 4 CFR 101.13(g). Such optional waivers should be handled on a case-by-case basis, in consultation with officials designated under § 1261.403. Examples of situations in which NASA may consider waiving interest and other related charges are:

(1) Pending consideration of a request for reconsideration or administrative review;

(2) Acceptance of an installment plan or other compromise agreement, where there is no indication of lack of good faith on the part of the debtor in not repaying the debt, and the debtor has provided substantiating information of inability to pay or other unavoidable hardship which reasonably prevented the debt from being repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 1261.416(c)(3).

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply:

(i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

### § 1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.

The Office of the NASA Comptroller will:

(a) Issue internal procedures to provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, and assist in evaluating offers in compromise.

(b) Consider the need, feasibility, and cost effectiveness of automated debt collection operation.

(c) Establish internal controls to identify causes, if any, of overpayments, delinquencies, and defaults, and establish procedures for corrective actions as needs dictate.

### § 1261.414 Compromise of claims.

(a) Designated NASA officials (see §§ 1261.402 and 1261.403) may compromise claims for money or property arising out of the activities of the agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the General Accounting Office (GAO) prior to their

further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payee, prior to its referral by the GAO for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See §1261.417(e) or 4 CFR 105.2(b). Claims for which the gross amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. If NASA has a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice. If NASA wishes to reject the compromise, GAO or Department of Justice approval is not required.

(c) A claim may be compromised pursuant to this section if NASA cannot collect the full amount because of the debtor's inability to pay the full amount within a reasonable time, or the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability or refusal to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; and

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. The compromise should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) A claim may be compromised if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

(e) A claim may be compromised if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of

collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

(f) *Enforcement policy*. Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

(g) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 1261.411, in every case in which this is possible.

(h) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income, and expenses. Forms such as Department of Justice Form OBD–500 or OBD–500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD–500C or by resort to balance sheets and such additional data as seems required. Samples of the Department of Justice forms are available from the Office of the NASA General Counsel. Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-back rights of the debtor.

(i) *Joint and several liability*. When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. NASA will not attempt to allocate the burden of paying such claims as between the debtors but will proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

### § 1261.415 Execution of releases.

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to § 1261.414, the official designated in § 1261.402 will prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

### § 1261.416 Suspending or terminating collection action.

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of

partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the agency, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) *Suspension of collection activity*—(1) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and registration records; state and local government agencies; the Internal Revenue Service (see 4 CFR 102.18); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation cf security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(2) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(i) The applicable statute of limitations has been tolled or started running anew; or

(ii) Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principle amount of the debt with interest at a later date.

(3) Request for waiver or administrative review. If the statute under which waiver or administrative review is sought is ''mandatory,'' that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano* v. *Yamasaki*, 422 U.S. 682 (1979)), then collection action must be suspended until either: The agency has considered the request for waiver/review; or the applicable time limit for making the waiver/review request, as prescribed in a written notice, has expired and the debtor, upon notice, has

not made such a request. If the applicable waiver/review statute is ''permissive,'' that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(4) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request (in the event the agency acts favorably on it), collection action should ordinarily be suspended, without regard to the factors specified for permissive waivers, unless it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection. See 4 CFR 104.2.

(d) *Termination of collection activity*. Collection activity may be terminated and NASA may close its file on the claim based on the following:

(1) Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(2) *Inability to locate debtor*. Collection action may be terminated on a claim when the debtor cannot be located, and either:

(i) There is no security remaining to be liquidated; or

(ii) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(3) *Cost will exceed recovery*. Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(4) *Claim legally without merit*. Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(5) *Claim cannot be substantiated by evidence*. Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to reduce voluntary payment are unavailing.

(e) *Transfer of claim*. When NASA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, NASA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under paragraphs (d)(1) and (2) of this section. Claims on which NASA holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this section.

**§1261.417 Referral to Department of Justice (DJ) or General Accounting Office (GAO).**

(a) *Prompt referral.* Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with §1261.406 and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with §§1261.414 and 1261.416, shall be promptly referred to the Department of Justice for litigation.

(1) Claims for which the gross original amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this subpart, and in any event, well within the period for bringing a timely suit aqainst the debtor. Ordinarily, referrals should be made within l year of the agency's final determination of the fact and the amount of the debt.

(3) *Minimum amount.* NASA is not to refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless:

(i) Referral is important to a significant enforcement policy; or

(ii) The debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Claims arising from audit exceptions taken by the GAO to payments made by agencies must be referred to the GAO for review and approval prior to referral to the Department of Justice for litigation, unless NASA has been granted an exception by the GAO. Referrals shall comply with instructions, including monetary limitations, contained in the GAO Policy and Procedures Manual for Guidance to Federal Agencies and paragraphs (e) and (f) of this section.

(c) When the merits of the claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the designated official should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, NASA shall refrain from having any contact with the debtor about the pending claim and shall direct the debtor to GAO or to the DJ, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the DJ, as appropriate, shall be immediately notified by NASA of any payments which are received from the debtor subsequent to referral of a claim under this section.

(e) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by NASA, effective March 1, 1983, shall be used with all referrals of administratively uncollectible claims. As required by the CCLR, the following information must be included:

(1) *Report of prior collection actions.* A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the administrative collection actions have been omitted, the reason for their omission must be provided. GAO, the United States Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in this subpart (see 4 CFR part 102).

(2) *Current address of debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department

of Justice for the commencement of foreclosure of other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Reasonably current credit data which indicates that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government. Such credit data may take the form of:

(i) A commercial credit report;

(ii) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(iii) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(iv) An audited balance sheet of a corporate debtor.

(4) Reasons for credit data omissions. The credit data may be omitted if:

(i) A surety bond is available in an amount sufficient to satisfy the claim in full;

(ii) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(iii) NASA wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(iv) The debtor is in bankruptcy or receivership;

(v) The debtor's liability to the Government is fully covered by insurance, in which case NASA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(vi) The status of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(f) *Preservation of evidence.* Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

## Subpart 1261.5—Administrative Offset of Claims

SOURCE: 52 FR 19487, May 26, 1987, unless otherwise noted.

### § 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include ''Salary Offset,'' which is governed by subpart 1261.6, infra. Consistent with 4 CFR 102.3, collection by administrative offset will be undertaken by NASA on all liquidated or certain in amount claims in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(b) Whether collection by administrative offset is feasible is a determination to be made by NASA on a case-by-case basis, in the exercise of sound discretion. NASA will consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, NASA may give due consideration to the debtor's financial condition; or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate.

(c) NASA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(1) Debts owed by any State or local Government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(3) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

### §1261.501 Definition.

*Administrative offset*—the term, as defined in 31 U.S.C. 3701(a)(1), means ''withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.''

### §1261.502 Notification procedures.

(a) Before collecting any claims through administrative offset, a 30-day written notice must be sent to the debtor by certified mail, return receipt requested. The notice must include:

(1) The nature and amount of the debt;

(2) NASA's intention to collect by administrative offset; and

(3) An explanation of the debtor's rights under 31 U.S.C. 3716(a), or other relied upon statutory authority, which must include a statement that the debtor has the opportunity, within the 30-day notice period, to:

(i) Inspect and copy records of NASA with respect to the debt;

(ii) Request a review by NASA of its decision related to the claim; and

(iii) Enter into a written agreement with the designated official (see §1261.402) to repay the amount of the claim. However, sound judgment should be exercised in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, NASA should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(b) NASA may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (a) of this section if:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(3) In cases where the procedural requirements of paragraph (a) of this section had previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or salary offset under §1261.603, the agency is not required to duplicate those requirements before taking administrative offset.

### §1261.503 Agency records inspection; hearing or review.

(a) NASA shall provide the debtor with a reasonable opportunity for an ''oral hearing'' when:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although significant matters discussed at the hearing should be carefully documented. See 4 CFR 102.3(c)(1). Such hearing may be an informal discussion/interview with the debtor, face-to-face meeting between debtor and cognizant NASA personnel, or written formal submission by the

debtor and response by the NASA cognizant personnel with an opportunity for oral presentation. The hearing will be conducted before or in the presence of an official designated by the NASA General Counsel or designee on a case-by-case basis. The decision of the reviewing/hearing official should be communicated in writing (no particular form is required) to the affected parties, and will constitute the final administrative decision of the agency.

(b) Paragraph (a) of this section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and NASA has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. See 4 CFR 102.3(c)(2).

(c) In those cases where an oral hearing is not required or granted, NASA will nevertheless accord the debtor a ''paper hearing''—that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the available written record. See 4 CFR 102.3(c)(3). In such case, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for review and determination by counsel or designee.

(d) A request to inspect and/or copy the debtor's own debt records or related files, and/or for a hearing or review accompanied by a statement of the basis or grounds for such hearing or review, must be submitted within 30 calendar days of the receipt of the written notice under § 1261.502(a). A reasonable time to inspect and copy records will be provided during official working hours, but not to exceed 5 business days, unless a verified statement showing good cause requires a longer period. Any suspension of collection or other charges during the period of the inspection, or hearing or review, shall comply with §§ 1261.412 and 1261.416. Requests for or consideration of compromising the debt must comply with § 1261.414.

### § 1261.504 Interagency requests.

(a) Requests to NASA by other Federal agencies for administrative offset should be in writing and forwarded to the Office of the NASA Comptroller, NASA Headquarters, Washington, DC 20546.

(b) Requests by NASA to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations; however, if such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from NASA should be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(d) Requests from or to NASA must be accompanied by a certification that the debtor owes the debt (including the amount) and that the provisions of (or comparable to) subpart 1261.5 or subpart 1261.6, as applicable, have been fully complied with. NASA will cooperate with other agencies in effecting collection.

### § 1261.505 Multiple debts.

When collecting multiple debts by administrative offset, NASA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

### § 1261.506 Limitation periods.

NASA may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. Determination of when the debt first accrued

is to be made in accordance with existing law regarding the accrual of debts, such as under 28 U.S.C. 2415. See 4 CFR 102.3(b)(3).

### §1261.507 Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, NASA may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management (OPM) in accordance with the OPM regulations (see 5 CFR 831.1801, *et seq.*).

(b) When making a request for administrative offset under paragraph (a) of this section, NASA shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) NASA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) NASA has complied with the requirements of this subpart 1261.5 which implements 4 CFR 102.3, including any required hearing or review.

(c) Once NASA has decided to request administrative offset under this section, the request should be made as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and ''flag'' the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If NASA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the designated official should act promptly to modify or terminate the agency's request to OPM for offset.

(e) OPM is not required or authorized by 4 CFR 102.4 to review the merits of NASA's determination with respect to:

(1) The amount and validity of the debt;

(2) Waiver under an applicable statute; or

(3) Provide or not provide an oral hearing.

### §1261.508 Offset against a judgment.

Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

## Subpart 1261.6—Collection by Offset From Indebted Government Employees

SOURCE: 52 FR 19487, May 26, 1987, unless otherwise noted.

### §1261.600 Purpose of subpart.

This subpart implements 5 U.S.C. 5514 in accordance with the OPM regulation and establishes the procedural requirements for recovering pre-judgment debts from the current pay account of an employee through what is commonly called salary offset, including a situation where NASA (the current paying agency) is not the employee's creditor agency. Salary offset to satisfy a judgment or a court determined debt is governed by section 124 of Pub. L. 97–276 (October 2, 1982), 5 U.S.C. 5514 *note*.

### §1261.601 Scope of subpart.

(a) *Coverage.* This subpart applies to agencies and employees as defined in §1261.602.

(b) *Applicability*. This subpart and 5 U.S.C. 5514 apply in recovering certain prejudgment debts by administrative offset except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which

are not specified in 5 U.S.C. 5514 and this subpart should be consistent with subpart 1261.5.

(1) *Excluded debts or claims.* The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705, employee training expenses in 5 U.S.C. 4108, and debts determined by a court as provided in 5 U.S.C. 5514 *note*).

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

### § 1261.602 Definitions.

For purposes of this subpart:

(a) *Agency* means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of Title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of Title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. NASA must exclude deductions listed in OPM's garnishment regulations at 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) *Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(g) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(h) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 8346(b), or any other law.

### § 1261.603 Procedures for salary offset.

If NASA is both the paying and creditor agency, the following requirements must be met before a deduction is made from the current pay account of an employee.

(a) *Written notice.* The employee must be sent a minimum of 30 days written notice, which specifies:

(1) The origin, nature and amount of the indebtedness, and the official to contact within the agency (ordinarily, the designated financial management official for the particular installation);

(2) The intention of the agency to initiate collection of the debt through salary offset by deductions from the employee's current disposable pay, stating the amount, frequency, proposed beginning date, and duration of intended deductions (the amount to be deducted for any period, without the consent of the employee, may not exceed 15 percent of disposable pay);

(3) An explanation of any interest, penalties, or administrative costs included in the amount, and that such assessment must be made unless excused in accordance with 14 CFR 1261.412;

(4) The right for an opportunity (which does not toll the running of the 30-day period) to inspect and copy NASA records relating to the debt or to request and receive (if reasonable) a copy of such records, provided that such opportunity must be exercised on or before the 15th day following receipt of the notice and can be conducted only during official working hours for a reasonable period of time not to exceed 5 working days;

(5) If not previously provided, the opportunity (under terms agreeable to NASA) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the authorized agency official (see 14 CFR 1261.402) and documented in NASA's files (see 14 CFR 1261.407(d));

(6) An opportunity for a hearing, as provided in paragraph (c) of this section, on the agency's determination concerning the existence and amount of the debt, and the terms of the repayment schedule (in the case of an employee whose repayment schedule is established other than by written agreement);

(7) The hearing request should be addressed to the Office of the NASA General Counsel or to the Office of Chief Counsel of the NASA installation involved, as appropriate; counsel's name and address will be as stated in the notice.

(8) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(9) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) *Exception to entitlement to written notice.* NASA is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(c) *Petition filing; hearing; decision and review.* The notice described in paragraph (a) of this section should include the following provisions, which may be copied and attached to the notice.

(1) The employee may petition for a hearing, but such petition must be in writing and received by NASA on or before the 15th day following receipt of the notice, and include a statement of the reasons for such hearing. No particular form is required, and a timely, legible letter request (with the stated reasons) will suffice; however, the employee must sign the petition and include with it, with reasonable specificity, all the supporting facts and evidence, including a list of the witnesses, if any.

(2) The petition should be addressed to the agency counsel designated in the notice, but the hearing will be conducted by an official not under the supervision or control of the NASA Administrator or by appointment of an administrative law judge. Notice of the name and address of the hearing official will be sent to the employee within 10 days of receipt of petition. A hearing official will be designated on a case-by-case basis under reimbursable arrangements or through direct payment as events may warrant.

(3) The timely filing of the petition will stay the commencement of collection; and the final decision on the hearing will be issued at the earliest practicable date, but not later than 60 days

after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(4) Any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(5) The form and content of the hearing will be determined by the hearing official depending on the nature and complexity of the transaction giving rise to the debt. The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. However, depending on the particular facts and circumstances, the hearing may be analogous to a fact-finding proceeding with oral presentations; or an informal meeting with or interview of the employee; or formal written submissions, with an opportunity for oral presentation, and decision based on the available written record. Ordinarily, hearings may consist of informal conferences before the hearing official in which the employee and agency officials will be given full opportunity to present evidence, witnesses, and argument. The employee may represent himself or herself or be represented by an individual of his or her choice. The hearing official must maintain a summary record of the hearing provided under this subpart. For additional guidance, see 14 CFR 1261.503.

(6) The decision will be in writing and state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The respective positions of the agency and of the employee;

(iii) The hearing official's analysis (which address the employee's/agency's grounds, the amount and validity of the alleged debt, and, where applicable, the repayment schedule); and

(iv) The hearing official's findings and conclusions.

(7) The hearing official will notify the employee, the NASA Comptroller or designee, and the designated agency counsel of the decision.

(8) The decision of the hearing official shall constitute the Final Administrative Decision of the agency.

(d) Petition after time expiration. No petition for a hearing is to be granted if made after the 15-day period prescribed in paragraph (c)(1) of this section, unless the employee can show to the satisfaction of the agency official indicated on the notice that the delay was caused by circumstances beyond his or her control (for example, proven incapacity, illness, or hospitalization), or that the agency did not give notice of the time limit and the employee was otherwise unaware of such limit.

(e) *Limitation on amount and duration of deductions.* Ordinarily, debts must be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump sum or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see 14 CFR 1261.411), but the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made (unless the employee has agreed in writing to the deduction of a greater amount). Deduction must commence with the next full pay interval (ordinarily, the next biweekly pay period). Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (f) of this section.

(f) *Determining ability to pay.* An offset may produce an extreme financial hardship for an employee if it prevents the employee from meeting costs necessarily incurred for essential subsistence expenses for food, reasonable housing, clothing, transportation, and medical care. In determining whether

an offset would prevent the employee from meeting the essential subsistence expenses, the employee may be required to show income from all sources (including spouse and dependents, if applicable), list all known assets, explain exceptional expenses, and produce any other relevant factors.

(g) *Liquidation from final check; other recovery.* If the employee retires or resigns from Federal service, or if his or her employment or period of active duty ends before collection of the debt is completed, the balance may be deducted from the final salary payment and any remaining balance from the lump-sum leave, if applicable. If the debt is not fully paid by offset from any final payment due the former employee as of the date of separation, offset may be made from later payments of any kind due the former employee from the United States (as provided in 14 CFR part 1261 subpart 1261.5, including offset from the Civil Service Retirement and Disability Fund under 14 CFR 1261.507).

(h) *Interest, penalties, and administrative costs.* Assessment of interest, penalties, and administrative costs, on debts being collected under this subpart, shall be in accordance with 14 CFR 1261.412 which implements 4 CFR 102.13.

### §1261.604 Nonwaiver of rights by involuntary setoff.

The employee's involuntary payment of all or any portion of the debt, being collected under this subpart, must not be construed as a waiver of any rights which the employee may have under an existing written contract applicable to the specific debt or under any other pertinent statutory authority for the collection of claims of the United States or the agency.

### §1261.605 Refunds.

(a) NASA will promptly refund to the employee amounts paid or deducted under this subpart when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds are not to bear any interest unless the law applicable to that particular debt specifically requires or permits a stated interest amount on refunds.

### §1261.606 Salary offset request by a creditor agency other than NASA (the current paying agency).

(a) *Format of the request.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must:

(1) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM;

(2) If the collection must be made in installments, the creditor agency must also advise NASA of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim request, the creditor agency must also indicate the action(s) taken under 5 U.S.C. 5514(a)(2) and give the date(s) the action(s) was/were taken.

(b) *Limitation period.* The creditor agency may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, except as provided in 14 CFR 1261.506, which implements 4 CFR 102.3(b)(3).

(c) *Employees who are separating or have separated*—(1) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in 5 CFR 550.1104(1) of the OPM regulations (14 CFR 1261.603(f)) for ''liquidation from final check.'' NASA must then

certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(3) of this section. If NASA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it should notify the creditor agency and forward the copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency, not NASA, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(2) *Employees who have already separated.* If the employee is already separated and all payments due from NASA have been paid, NASA must return the claim to the creditor agency for any further collection, indicating the employee's date of separation and the current employment and mailing address(es), if known.

(3) Employee who transfers from NASA to another Federal agency.

(i) *Certification of amount collected.* If, after the creditor agency has submitted the debt claim to NASA, the employee transfers to another Federal agency before the debt is collected in full, NASA must then certify the total amount of the collection made on the debt. A copy of the certification should be furnished the employee, and another copy furnished to the creditor agency along with notice of the employee's transfer.

(ii) *Official personnel folder insertion; new paying agency.* Information on the debt claim must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. It will not be necessary for the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 of this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving NASA's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt*—(1) *Incomplete claim.* If NASA receives incomplete debt claim information, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and complete debt claim information received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If NASA receives a properly documented debt claim, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim request must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim request.

(3) NASA is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim request.

### § 1261.607 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in appendix A of 5 CFR part 581 to arrange for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in appendix A of 5 CFR part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

# PART 1262—EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

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AUTHORITY: 5 U.S.C. 504; 42 U.S.C. 2473(c)(1).

SOURCE: 51 FR 15311, Apr. 23, 1986, unless otherwise noted.

## Subpart 1262.1—General Provisions

### §1262.101 Purpose of these rules.

(a) The pertinent provisions of the Equal Access to Justice Act at 5 U.S.C. 504 (hereinafter ''the Act'') provide for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications''). An eligible party may receive an award when it prevails, unless it has unreasonably protracted the proceedings, or the Agency's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the National Aeronautics and Space Administration (NASA) will use in determining awards.

(b) As used in this part:

(1) *Adversary adjudication* means:

(i) An adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license;

(ii) Any appeal of a decision made pursuant to section 6 of the Contract Disputes Act (CDA) of 1978, as amended (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of the CDA (41 U.S.C. 607);

(iii) Any hearing conducted under Chapter 38 of Title 31 (added by section 6104 of the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99–509, 100 Stat. 1948, Oct. 21, 1986), 31 U.S.C. 3801, et seq., as amended); and

(iv) The Religious Freedom Restoration Act (RFRA) of 1993 (added by section 4(b), of RFRA (Pub. L. 103–141, 107 Stat. 1489, Nov. 16, 1993), 42 U.S.C. 2000bb).

(2) *Adjudicative officer* means the deciding official, without regard to whether the official is designated an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication;

(3) *Position of the agency* means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based;

(4) *Party*, as defined in 5 U.S.C. 551(3), includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes, and who meets the eligibility requirements of §1262.104; and

(5) *Agency* with a capital A denotes the NASA.

(c) Determination of *Substantially justified*. Whether or not the position of the agency was substantially justified

shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

[51 FR 15311, Apr. 23, 1986, as amended at 60 FR 12668, Mar. 8, 1995]

### § 1262.102 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before NASA on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart 1262.2, had been filed with the Agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

### § 1262.103 Proceedings covered.

(a) The Act applies to the following adversary adjudications conducted by the Agency:

(1) Adjudications under 5 U.S.C. 554 in which the position of NASA or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceedings;

(2) Appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Board of Contract Appeals (BCA) as provided in Section 8 of that Act (41 U.S.C. 607);

(3) Any hearing conducted under Chapter 38 of Title 31 (31 U.S.C. 3801, et seq., as amended); and

(4) Adjudications under the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb).

(b) The Act does not apply to:

(1) Any proceeding in which this Agency may prescribe a lawful present or future rate;

(2) Proceedings to grant or renew licenses (note, however, that proceedings to modify, suspend, or revoke licenses are covered if they are otherwise adversary adjudications); and

(3) Proceedings which are covered by a compromise or settlement agreement, unless specifically consented to in such agreement.

(c) NASA may also designate a proceeding as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Agency's failure to designate a proceeding as an adversary adjudication shall not preclude the filling of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(d) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[60 FR 12668, Mar. 8, 1995]

### § 1262.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses, the applicant must be a ''party'' to the adversary adjudication for which an award is sought. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart 1262.2.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) Any owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organizaiton described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of

an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than as a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather then to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[51 FR 15311, Apr. 23, 1986, as amended at 60 FR 12668, Mar. 8, 1995]

### §1262.105 Standards for awards.

(a) A prevailing applicant may receive an award subject to paragraph (b) of this section, for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency.

(b) An award, for any portion of the adversary adjudication, will be denied if the applicant has unreasonably protracted the proceedings, or denied or reduced if special circumstances make the award sought unjust.

### §1262.106 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which this Agency pays expert witnesses, which is $20 an hour (5 hours maximum) or maximum daily rate of $100 (3 days maximum). However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar service, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the application;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test,

project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

### § 1262.107 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Agency may adopt regulations providing that attorney fees may be awarded at a rate higher then $75 per hour in some or all of the types of proceedings covered by this part. This Agency will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 553).

(b) Any person may file with the Agency a petition for rulemaking to increase the maximum rate for attorney fees. The petition should be addressed to the General Counsel, NASA Headquarters, Washington, DC 20546; should identify the rate the petitioner believes the Agency should establish and the types of proceedings in which the rate should be used; and should also explain fully the reasons why the higher rate is warranted. The Agency will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding or denying the petition, or taking other appropriate action.

### § 1262.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before NASA, the award or an appropriate portion of the award shall be made against that agency, subject to § 1262.105(b), if it had taken a position that is not substantially justified.

### § 1262.109 Delegations of authority.

(a) The NASA Administrator hereby delegates authority to the General Counsel or designee to take final action on matters pertaining to the Act, other than the authority for final fee determination after Agency review pursuant to § 1262.308.

(b) The NASA Administrator may, in particularly specified matters under the Act, delegate authority to officials other than those designated in paragraph (a) of this section.

## Subpart 1262.2—Information Required from Applicants

### § 1262.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if the applicant:

(1) Attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) States that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expense for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this Agency to consider in determing whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer

or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

**§1262.202 Net worth exhibit.**

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defiined in §1262.104(f) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public records of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The materials in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Agency's regulations under the Freedom of Information Act, at 14 CFR part 1206.

**§1262.203 Documentation of fees and expenses.**

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter for which an award is sought. A separate itemized statement, accompanied by an oath of affirmation under penalty of perjury (28 U.S.C. 1746), shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may, in addition, require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

**§1262.204 When an application may be filed.**

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the latter of:

(1) The date on which the last ''initial decision'', in a bifurcated proceeding, or other recommended disposition of the merits (both as to liability and amount, if applicable) of the proceeding, by an adjudicative officer or intermediate reviewer, becomes administratively final;

(2) The date on which an order is issued disposing of any petitions for reconsideration;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(4) The date of a final order or any other final resolution of the proceeding, such as a settlement or a voluntary dismissal, which is not subject to a petition for reconsideration.

## Subpart 1262.3—Procedures for Considering Applications

### § 1262.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1262.202(b) for confidential financial information.

### § 1262.302 Answer to application.

(a) Within 30 calendar days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 calendar days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1262.306.

### § 1262.303 Reply.

Within 15 calendar days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1262.306.

### § 1262.304 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments about an application within 30 calendar days after it is served, or about an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

### § 1262.305 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

### § 1262.306 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

### §1262.307 Decision.

(a) The adjudicative officer shall issue an initial decision on the application with 90 calendar days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

(1) The applicant's eligibility and status as a prevailing party;

(2) Whether the Agency's position was substantially justified;

(3) Whether the applicant unreasonably protracted the proceedings, or whether special circumstances make an award unjust; and

(4) The amounts, if any, awarded for fees and expenses with an explanation of the reasons for any difference between the amount requested and the amount awarded. Further, if the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

(b) When the Agency appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

[51 FR 15311, Apr. 23, 1986, as amended at 60 FR 12669, Mar. 8, 1995]

### §1262.308 Agency review.

(a) Within 30 calendar days of the receipt of the adjudicative officer's initial decision on the fee application, either the applicant or agency counsel may seek Agency review of the decision; or, the NASA Administrator, upon the recommendation of the General Counsel or other designee, may decide to review the decision based on the record. Whether to review a decision is solely a matter within the discretion of the NASA Administrator. A 15-day notice of such review will be given the applicant and agency counsel, and a determination made not later than 45 days from the date of notice. The Administrator may make a final determination concerning the application or remand the application to the adjudicative officer for further proceedings.

(b) If neither the applicant nor agency counsel seek review, and the NASA Administrator does not on own initiative take a review, the adjudicative officer's initial decision on the fee application shall be the final administrative decision of the Agency 45 days after it is issued.

### §1262.309 Judicial review.

Judicial review of final Agency decisions on awards may be sought under 5 U.S.C. 504(c)(2), which provides: If a party other than the United States is dissatisfied with a determination of fees and other expenses made under [this part], that party may, within 30 days after the [final administrative] determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court's determination of any appeal heard under this [authority] shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by the substantial evidence.

[51 FR 15311, Apr. 23, 1986, as amended at 60 FR 12669, Mar. 8, 1995]

### §1262.310 Payment of award.

(a) An applicant seeking payment of an award shall submit to the paying agency a copy of the Agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The submission to NASA should be addressed as follows:

Director, Financial Management Division, NASA Headquarters, Washington, DC 20546.

(b) The Agency will pay the amount awarded to the applicant within 60 days, if feasible, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

## PART 1263—DEMAND FOR INFORMATION OR TESTIMONY SERVED ON AGENCY EMPLOYEES; PROCEDURES

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AUTHORITY: 5 U.S.C. 301, 42 U.S.C. 2473(c)(1).

SOURCE: 55 FR 28370, July 11, 1990, unless otherwise noted.

### § 1263.100 Purpose and scope.

(a) This part sets forth procedures to be followed with respect to the production or disclosure of official information or records and/or the testimony of present or former employees of the National Aeronautics and Space Administration relating to any official information acquired by any employee of NASA as part of the performance of that employee's official duties or by virtue of that employee's official status, where a demand for such production, disclosure, or testimony is issued in a federal, state, or other legal proceeding.

(b) This part does not apply to any legal proceeding in which an employee is to testify, while in leave status, as to facts or events that are in no way related to the official duties of that employee or to the functions of the NASA.

### § 1263.101 Definitions.

(a) *Agency*—As referred to in this regulation, Agency means the National Aeronautics and Space Administration.

(b) *Demand*—A subpoena, order, or authorized request for official information, or for the appearance and testimony of NASA personnel, issued as the result of a legal proceeding.

(c) *Employee*—Includes all present and former officers and employees of the National Aeronautics and Space Administration who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Administrator of the agency.

(d) *Legal proceeding*—Includes any proceeding before a court of law or equity, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(e) *Legal proceeding involving the United States*—Any proceeding before a court of law or equity brought on behalf of, or against the United States, NASA or NASA employees, and resulting from alleged NASA operations.

(f) *Official information*—All information of any kind, however stored, that is in the custody and control of NASA or was acquired by NASA personnel as part of official duties or because of official status while such personnel were employed by or on behalf of the NASA.

### § 1263.102 Procedure when a demand is issued in a legal proceeding involving the United States.

Whenever an employee or former employee of NASA receives a demand for production of materials or the disclosure of information, or for appearance and testimony as a witness in a legal proceeding in which NASA or the United States is a party, the employee shall immediately notify in writing the Installation Chief Counsel for Installation employees, the General Counsel

for Headquarters employees, or the Attorney-Adviser to the Inspector General (IG) for IG employees. This notice must include copies of all pertinent legal documents and a summary of the employee's knowledge concerning the legal proceeding in question. When necessary, this information may be reported orally, followed by a written confirmation.

**§1263.103 Procedure when a demand is issued in a legal proceeding not involving the United States.**

Whenever an employee or former employee of the Agency receives a demand for production or disclosure of official information in a legal proceeding not involving the United States, the employee shall immediately notify the General Counsel or designate. In addition, the party causing the demand to be issued shall furnish the Office of General Counsel a written, detailed statement of the information sought and its relevance to the proceeding in connection with which it is requested. The General Counsel or designate may waive the requirement that a written summary be furnished where he/she deems it unnecessary. The election to waive the requirement of a written summary in no way constitutes a waiver of any other requirements set forth in this section.

**§1263.104 Production, disclosure, or testimony prohibited unless approved.**

If an employee or former employee receives a demand to produce or disclose official information, that employee may not disclose such materials or information or testify regarding same without the prior approval of the General Counsel or designate.

**§1263.105 Considerations in determining whether production or disclosure should be made.**

The General Counsel or designate shall direct employees to honor all valid demands. In deciding whether a particular demand is valid, the General Counsel or designate may consider:

(a) Whether such disclosure or appearance is appropriate under the rules of procedure governing the legal proceeding in which the demand arose.

(b) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(c) Whether disclosure might improperly reveal trade secrets, or commercial or financial information that is confidential or privileged.

(d) Whether disclosure might reveal classified information.

(e) Whether disclosure would violate a specific applicable constitutional provision, federal statute or regulation, or executive order.

(f) Whether appearance of the requested employee would seriously implicate an interest of the Agency such as conservation of employee time for conducting official business, avoidance of expending appropriated monies for non-federal purposes, or avoidance of involving the agency in controversial issues not related to its mission.

**§1263.106 Final decision of the General Counsel as to production, disclosure, or appearance.**

After consideration of the factors enumerated in §1263.105 (a) through (f), the General Counsel or designate may authorize the testimony, disclosure, or production as demanded; limit the subject matter or extent of any testimony, disclosure, or production through written instruction to the employee; or deny permission for any testimony, disclosure, or production. Where appropriate, the General Counsel or designate may seek withdrawal of the demand by the authorizing party. Any decision of the General Counsel or designate shall be final and shall be communicated to the employee and the party causing the demand to be issued.

**§1263.107 Procedure to be followed when response to a demand is required before the General Counsel or designate has reached a final decision.**

If a response to a demand is required before the General Counsel or designate can render a decision, the employee subpoenaed, or an agency attorney or other government attorney designated for that purpose, shall appear on behalf of the employee and shall furnish the authority which issued the demand a copy of these regulations, and inform the authority that the demand

has been referred for the prompt consideration of the General Counsel, and shall respectfully request the authority to stay the demand until the General Counsel or designate has rendered a final decision.

### § 1263.108 Procedure in the event of an adverse ruling.

If the court or other authority which caused the demand to be issued declines to stay the effect of the demand pending a final decision by the General Counsel or designate; or if the General Counsel or designate directs that the employee may not comply with the demand, and a court or other authority rules that the demand must be complied with irrespective of that decision, the employee upon whom the demand has been made, or an agency or other governmental attorney, shall respectfully decline to comply with the demand and shall cite, ''United States ex rel. Touhy v. Ragen, et al., 340 U.S. 462 (1951).''

### § 1263.109 Considerations in determining whether these procedures should be waived.

The General Counsel or designate may grant permission to deviate from the policy or procedure established in these regulations. Permission to deviate will be granted when the deviation will not interfere with matters of operational necessity and when:

(a) It is necessary to prevent a miscarriage of justice; or

(b) The deviation is in the best interests of NASA or the United States.

### § 1263.110 Intention to provide guidance.

This part is intended to provide guidance for the internal operation of NASA and is not intended to, does not, and may not be relied upon to create any right of benefit—substantive or procedural—enforceable at law against the United States or NASA.

## PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

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APPENDIX A TO PART 1264—NOTICE TO CONSENT TO THE CHAIRPERSON, NASA BOARD OF CONTRACT APPEALS (BCA), OR DESIGNEE, AS PRESIDING OFFICER

AUTHORITY: 31 U.S.C. 3809, 42 U.S.C. 2473(c)(1).

SOURCE: 52 FR 39498, Oct. 22, 1987, unless otherwise noted.

**§1264.100 Basis and purpose.**

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part does the following:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

**§1264.101 Definitions.**

(a) *ALJ* means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344. For purposes of this part, the ALJ shall be referred to as the presiding officer.

(b) *Authority* means the National Aeronautics and Space Administration (NASA).

(c) *Authority head* means the NASA Administrator or Deputy Administrator or designee. For purposes of this regulation, the NASA General Counsel or Deputy General Counsel is designated legal counsel to the Authority head.

(d) *Benefit* means, in the context of *statement*, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) *Claim* means any request, demand, or submission—

(1) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(iii) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) *Complaint* means the administrative complaint served by the reviewing official on the defendant under §1264.106.

(g) *Consent hearing* means that the authority and the defendant consent, as provided in §1264.106(c), that the presiding officer be the Chairperson of the NASA Board of Contract Appeals (BCA). The Chairperson may designate another administrative judge of the NASA BCA as presiding officer in a consent hearing.

(h) *Defendant* means any person alleged in a complaint under §1264.106 to be liable for a civil penalty or assessment under §1264.102.

(i) *Government* means the United States Government.

(j) *Individual* means a natural person.

(k) *Initial decision* means the written decision of the ALJ or presiding officer required by §1264.109 or §1264.136, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(l) *Investigating official* means the NASA Inspector General, or designee who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(m) *Knows or has reason to know,* means that a person with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(n) *Makes,* wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made shall likewise include the corresponding forms of such terms.

(o) *Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(p) *Presiding officer,* except as provided for pursuant to consent trial notice, means (if the authority is not subject to the provisions of Subchapter II of Chapter 5, Title 5, U.S.C.) an officer or employee of the authority who—

(1) Is selected under Chapter 33 of Title 5 pursuant to the competitive examination process applicable to administrative law judges;

(2) Is appointed by the authority head to conduct hearings under this part;

(3) Is assigned to cases in rotation so far as practicable;

(4) May not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(5) Is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with Chapter 51 of such Title and Subchapter III of Chapter 53 of such Title;

(6) Is not subject to performance appraisal pursuant to Chapter 43 of such Title; and

(7) May be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board.

(q) *Representative* means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States, or of the District of Columbia, or of the Commonwealth of Puerto Rico.

(r) *Reviewing official* means the NASA Associate Administrator for Management. For purposes of this regulation, the Associate General Counsel (General) or designee is designated legal counsel to the Reviewing official.

(s) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

### § 1264.102 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed—

Shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement—

Shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

### §1264.103 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The subpoena may designate the person, to act on the investigating official's behalf, to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or

other civil relief, or to defer or postpone a report of referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of the investigating official to report violations of criminal law to the Attorney General.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

### § 1264.104 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 1264.103(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1264.102 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1264.106.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1264.102 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

### § 1264.105 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1264.106 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 1264.102(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 1264.102(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

### § 1264.106 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 1264.107.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in § 1264.109.

(c) At the same time the defendant is served with the complaint, he or she shall also be served with a—

(1) Notice to Consent to the Chairperson of the NASA Board of Contract Appeals (BCA), or Designee, as presiding officer;

(2) Copy of this part 1264 of 14 CFR.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

### §1264.107 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual servicing the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his/her representative.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### §1264.108 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official, as provided in §1264.110, shall file promptly with the presiding officer the complaint, the general answer denying liability, and the request for an extension of time. For good cause shown, the presiding officer may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### §1264.109 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in §1264.108(a), the reviewing official may refer the complaint to the presiding officer.

(b) Upon the referral of the complaint, the presiding officer shall promptly serve on defendant, in the manner prescribed in §1264.107, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the presiding officer shall assume the facts alleged in the complaint to be true and, if such facts establish liability under §1264.102, the presiding officer shall issue an initial decision imposing the maximum amount of penalities and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the presiding officer seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed

pending the presiding officer's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the presiding officer shall withdraw the initial decision under paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the presiding officer denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1264.137.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the presiding officer denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the presiding officer shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

### § 1264.110 Referral of complaint and answer to the presiding officer.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the presiding officer, and include the name and address of the attorney who will represent the authority before the presiding officer.

### § 1264.111 Notice of hearing.

(a) When the presiding officer receives the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 1264.107. At the same time, the presiding officer shall send a copy of such notice to the representative of the authority.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law asserted;

(4) A description of the precedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the authority and of the defendant;

(6) An opportunity for a settlement conference or proposals of adjustment through alternative dispute resolutions, if not already explored; and

(7) Such other matters as the presiding officer deems appropriate.

### § 1264.112 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act, as amended, may participate in these proceedings to the extent authorized by the provisions of that Act. (See section 3 of the False Claims Amendments Act of 1986, Pub. L. 99–562, October 27, 1986.)

### § 1264.113 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the presiding officer;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or as the authority representative in the administrative or judicial proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The presiding officer shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government must be a member of the legal staff of the authority. Nothing in this paragraph is intended to prevent assistance to the Government representative by attorneys in the NASA organization or other governmental entities.

### §1264.114 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

[54 FR 600, Jan. 9, 1989]

### §1264.115 Disqualification of reviewing official or presiding officer.

(a) A reviewing official or presiding officer in a particular case may disqualify himself or herself at any time.

(b) A party may file with the presiding officer a motion for disqualification of a reviewing official or a presiding officer. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons for disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until the matter of disqualification is resolved in accordance with paragraph (f) of this section.

(f)(1) If the presiding officer determines that a reviewing official is disqualified, the presiding officer shall dismiss the complaint without prejudice.

(2) If the presiding officer disqualifies himself or herself, the case shall be reassigned promptly to another presiding officer.

(3) If the presiding officer denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

### §1264.116 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Paticipate in any conference held by the presiding officer;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the presiding officer; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

### §1264.117 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters, including settlement conferences or other alternative dispute resolution, that may aid in the

fair and expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, requiring the attendance of witnesses and the production of documents at depositions or at hearings, which the presiding officer considers relevant and material;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no genuine issue as to any material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### § 1264.118 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objections of other parties) and written arguments;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters, including settlement, as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer may issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### § 1264.119 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1264.103(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of a reasonable fee for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1264.104 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the presiding officer following the filing of an answer pursuant to §1264.108.

**§1264.120 Discovery.**

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§1264.121 and 1264.122, the term *documents* includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the presiding officer. The presiding officer shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the presiding officer. Such a motion shall be accompanied by a copy of the discovery request or, in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in §1264.123.

(3) The presiding officer may grant a motion for discovery only if he/she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The presiding officer may grant discovery subject to a protective order under §1264.123.

(e) *Depositions.* (1) If a motion for deposition is granted, the presiding officer shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in §1264.107.

(3) The deponent may file with the presiding officer a motion to quash the subpoena or a motion for a protective order within 10 days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

**§1264.121 Exchange of witness lists, statements, and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the presiding officer, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with paragraph (b) of §1264.132. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the presiding officer, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the presiding officer shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party, in accordance with paragraph (a) of this section, unless the presiding officer finds goods cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the presiding officer, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

### § 1264.122 Subpoena for attendance at hearing.

(a) A party wishing the appearance and testimony of any individual at the hearing may request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the presiding officer for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 1264.107. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the presiding officer a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

### § 1264.123 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the presiding officer;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

### § 1264.124 Fees.

The party requesting a supoena shall pay the cost of the fees and mileage of any witness supoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

### § 1264.125 Form, filing, and service of papers.

(a) *Form.* (1) Documents filed with the presiding officer shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the presiding officer, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the presiding officer shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in §1264.107 shall be made by delivering a copy or by placing a copy of the document in the U.S. mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### §1264.126 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### §1264.127 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the presiding officer and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The presiding officer shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

### §1264.128 Sanctions.

(a) The presiding officer may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the presiding officer may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to, the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The presiding officer may refuse to consider any motion, request, response, brief, or other document which is not filed in a timely fashion.

### § 1264.129 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 1264.102 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer for good cause shown.

### § 1264.130 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the presiding officer, and the authority head upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the presiding officer and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect

to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the presiding officer or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

### §1264.131 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the presiding officer.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the presiding officer.

### §1264.132 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the presiding officer, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in §1264.121(a).

(c) The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### §1264.133 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided herein, the presiding officer shall not be bound by the Federal Rules of Evidence. However, the presiding officer may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The presiding officer shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The presiding officer shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 1264.123.

### § 1264.134 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the presiding officer at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the presiding officer and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the presiding officer pursuant to § 1264.123.

### § 1264.135 Post-hearing briefs.

The presiding officer may require the parties to file post-hearing briefs. In any event, upon approval of the presiding officer, any party may file a post-hearing brief. The presiding officer shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file reply briefs, and may grant an extension of the 60-day time period or other time for good cause shown.

### § 1264.136 Initial decision.

(a) The presiding officer shall issue an initial decision based solely on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 1264.102;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors found in the case, such as those described in § 1264.130.

(c) The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired or upon notification that the record is now closed. The presiding officer shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the presiding officer or a notice of appeal with the authority head. If the presiding officer fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the presiding officer is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### § 1264.137 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed

to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the presiding officer.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The presiding officer may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the authority head in accordance with §1264.138.

(g) If the presiding officer issues a revised initial decision, the revised decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with §1264.138.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### §1264.138 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) The time for appeal to the authority head is as follows:

(1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision. However, if any other party files a motion for a reconsideration under §1264.137, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer issues the initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under §1264.137 has expired, the presiding officer shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the presiding officer.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the presiding officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the presiding officer in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head. At the same time the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1264.102 is final and is not subject to judicial review.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

### § 1264.139 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. If the process is before the presiding officer, the authority head shall promptly transmit the finding to the presiding officer, who, in turn, must stay the proceeding and give notice to all parties and their representatives. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

### § 1264.140 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

### § 1264.141 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

### § 1264.142 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

### § 1264.143 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1264.141 or § 1264.142, or any amount agreed upon in a compromise or settlement under § 1264.145, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

### § 1264.144 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

### § 1264.145 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time, including proposals for alternative dispute resolution.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer and before the date on which the presiding officer issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the presiding officer issues an initial decision, except during the pendency of any judicial review under § 1264.141 or during the pendency of any civil action to collect penalties and assessments under § 1264.142.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any judicial review under 31 U.S.C. 3805 or of any civil action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 1264.146 Limitations.**

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 1264.107 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 1264.109(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

APPENDIX A TO PART 1264—NOTICE TO CONSENT TO THE CHAIRPERSON, NASA BOARD OF CONTRACT APPEALS (BCA), OR DESIGNEE, AS PRESIDING OFFICER

In accordance with the provisions of 14 CFR 1264.106, you are hereby notified that the Chairperson, NASA Board of Contract Appeals (BCA), or designee, in addition to other duties, upon your consent, may conduct any or all proceedings as the presiding officer, pursuant to 14 CFR part 1264 which implements the Program Fraud Civil Penalties Act of 1986.

You should be aware that your decision to consent, or not to consent, to the referral of this case to the NASA/BCA must be entirely voluntary. Only if you and the authority head consent to this reference will either the Chairperson or the designee to whom the case may be assigned be informed of your decision.

An appeal from a decision by the presiding officer under this consent procedure may be taken in the same manner as an appeal from a decision by any other presiding officer, as provided in 14 CFR 1264.136(d), 1264.137, 1264.138, and 1264.141.

If you consent, you must sign, date, and return this form within the 30-day period provided for your answer (see 14 CFR 1264.108, 1264.109).

consent: _____
(Signature of person alleged to be liable)

_____
(Print name)

_____
(Date of signature)

# PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX A TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C TO PART 1265—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); National Aeronautics and Space Act, Pub. L. 85–568, July 29, 1958, as amended, sec. 203(c)(1).

SOURCE: 53 FR 19177, 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and 60 FR 33036, June 26, 1995.

EDITORIAL NOTE: For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474 September 6, 1988.

## Subpart A—General

### § 1265.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of ''ineligible'' in § 1265.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103–355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040, 33044, June 26, 1995]

### § 1265.105 Definitions.

The following definitions apply to this part:

*Adequate evidence.* Information sufficient to support the reasonable belief

that a particular act or omission has occurred.

*Affiliate.* Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

*Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

*Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

*Conviction.* A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

*Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is ''debarred.''

*Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

*Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

*Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

*Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

*List of Parties Excluded from Federal Procurement and Nonprocurement Programs.* A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

*NASA.* National Aeronautics and Space Administration.

*Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

*Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

*Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

*Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) [Reserved]

*Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

*Respondent.* A person against whom a debarment or suspension action has been initiated.

*State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

*Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

*Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is ''suspended.''

*Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

[53 FR 19176, 19204, May 26, 1988, as amended at 60 FR 33041, 33044, June 26, 1995]

### § 1265.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as ''covered transactions.''

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, ''Effect of Action,'' §1265.200, ''Debarment or suspension,'' sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §1265.110(a). Sections 1265.325, ''Scope of debarment,'' and 1265.420, ''Scope of suspension,'' govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103–355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

[53 FR 19176, 19204, May 26, 1988, as amended at 60 FR 33041, 33044, June 26, 1995]

### §1265.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment

or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

## Subpart B—Effect of Action

### § 1265.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 1265.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1265.110(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

[60 FR 33041, 33044, June 26, 1995]

### § 1265.205 Ineligible persons.

Persons who are ineligible, as defined in § 1265.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

### § 1265.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1265.315 are excluded in accordance with the terms of their settlements. NASA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

### § 1265.215 Exception provision.

NASA may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 1265.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1265.505(a).

[60 FR 33041, 33044, June 26, 1995]

### § 1265.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment

under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in §1265.215.

[60 FR 33041, 33044, June 26, 1995]

### §1265.225 Failure to adhere to restrictions.

(a) Except as permitted under §1265.215 or §1265.220, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041, 33044, June 26, 1995]

## Subpart C—Debarment

### §1265.300 General.

The debarring official may debar a person for any of the causes in §1265.305, using procedures established in §§1265.310 through 1265.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

### §1265.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§1265.300 through 1265.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1265.215 or § 1265.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1265.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug-free workplace, as set forth in § 1265.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19177, 19204, May 26, 1988, as amended at 54 FR 4950, 4954, Jan. 31, 1989]

### § 1265.310 Procedures.

NASA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1265.311 through 1265.314.

### § 1265.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

### § 1265.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1265.305 for proposing debarment;

(d) Of the provisions of § 1265.311 through § 1265.314, and any other NASA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

### § 1265.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition*. Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

### § 1265.314 Debarring official's decision.

(a) *No additional proceedings necessary*. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary*. (1) In actions in which additional proceedings are necessary to determine

disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §1265.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

### §1265.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, NASA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E).

### §1265.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (*see* §1265.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§1265.311 through 1265.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19177, 19204, May 26, 1988, as amended at 54 FR 4950, 4954, Jan. 31, 1989]

**§ 1265.325 Scope of debarment.**

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1265.311 through 1265.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

## Subpart D—Suspension

**§ 1265.400 General.**

(a) The suspending official may suspend a person for any of the causes in § 1265.405 using procedures established in §§ 1265.410 through 1265.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1265.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

**§ 1265.405 Causes for suspension.**

(a) Suspension may be imposed in accordance with the provisions of §§ 1265.400 through 1265.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1265.305(a); or

(2) That a cause for debarment under § 1265.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

**§ 1265.410 Procedures.**

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* NASA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §1265.411 through §1265.413.

**§1265.411 Notice of suspension.**

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under §1265.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §1265.411 through §1265.413 and any other NASA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

**§1265.412 Opportunity to contest suspension.**

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

**§1265.413 Suspending official's decision.**

The suspending official may modify or terminate the suspension (for example, see §1265.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in

part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

### § 1265.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

### § 1265.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 1265.325), except that the procedures of §§ 1265.410 through 1265.413 shall be used in imposing a suspension.

## Subpart E—Responsibilities of GSA, Agency and Participants

### § 1265.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

### § 1265.505 NASA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which NASA has granted exceptions under § 1265.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1265.500(b) and of the exceptions granted under § 1265.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

**§1265.510 Participants' responsibilities.**

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. ).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to NASA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

## Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21692, May 25, 1990, unless otherwise noted.

**§1265.600 Purpose.**

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

**§1265.605 Definitions.**

(a) Except as amended in this section, the definitions of §1265.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are

prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

### § 1265.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

### § 1265.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 1265.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)–(g)

and/or (B) of the certification (alternate I to appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (alternate II to appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

### §1265.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in §1265.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* §1265.320(a)(2) of this part).

### §1265.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

### §1265.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall

ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

### § 1265.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991–0002)

## APPENDIX A TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

*Instructions for Certification*

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted

or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,* as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33044, June 26, 1995]

## APPENDIX B TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

*Instructions for Certification*

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or

agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal,* and *voluntarily excluded,* as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

*Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions*

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33044, June 26, 1995]

## APPENDIX C TO PART 1265—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

*Instructions for Certification*

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

*Certification Regarding Drug-Free Workplace Requirements*

*Alternate I.* (GRANTEES OTHER THAN INDIVIDUALS)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

*Alternate II.* (GRANTEES WHO ARE INDIVIDUALS)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21692, May 25, 1990]

## PART 1266—CROSS-WAIVER OF LIABILITY

Sec.

1266.100 Purpose.
1266.101 Scope.
1266.102 Cross-waiver of liability for Space Station Freedom activities.
1266.103 Cross-waiver of liability during Shuttle Operations.
1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

AUTHORITY: 42 U.S.C. 2473 (c)(1) and (c)(5).

SOURCE: 56 FR 48430, Sept. 25, 1991, unless otherwise noted.

### § 1266.100 Purpose.

The purpose of this regulation is to ensure that consistent cross-waivers of liability are included in NASA agreements for Space Station Freedom activities, Shuttle launch services, and NASA Expendable Launch Vehicle (ELV) program launches.

### § 1266.101 Scope.

These provisions at § 1266.102, contained in Article 16 of the ''Intergovernmental Agreement among the United States, the Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation and Utilization of the Permanently Manned Civil Space Station,'' form the regulatory basis for cross-waivers to be incorporated in NASA agreements implementing the Intergovernmental Agreement and the memoranda of understanding between the U.S. and its respective international partners on Space Station Freedom. The provisions at § 1266.103 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for Shuttle launch services that do not involve activities in connection with Space Station Freedom. The provisions at § 1266.104 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for NASA ELV program launches that do not involve activities in connection with Space Station Freedom.

### § 1266.102 Cross-waiver of liability for Space Station Freedom activities.

(a) The objective of this section is to establish a cross-waiver of liability (''cross-waiver'') by the Partner States and related entities in the interest of encouraging participation in exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability shall be broadly construed to achieve this objective.

(b) For the purposes of this section:

(1)(i) A *Partner State* is each contracting Party for which the ''Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station'' (the ''Intergovernmental Agreement'') has entered into force, in accordance with Article 25 of the Intergovernmental Agreement.

(ii) A Partner State includes its Cooperating Agency. The National Aeronautics and Space Administration (NASA) for the United States, the European Space Agency (ESA) for the European Governments, the Canadian

Space Agency (CSA) for the Government of Canada, and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(2) The term *related entity* means:

(i) A contractor or subcontractor of a Partner State at any tier;

(ii) A user or customer of a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Partner State at any tier. ''Contractors'' and ''subcontractors'' include suppliers of any kind.

(3) The term *damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(4) The term *launch vehicle* means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(5) The term *payload* means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term *Protected Space Operations* means all launch vehicle activities, Space Station Freedom activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of this Agreement, the MOU's, and implementing arrangements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* also includes all activities related to evolution of the Space Station, as provided for in Article 14 of the Intergovernmental Agreement. *Protected Space Operations* excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station-related activities in implementation of this Agreement.

(c)(1) Each Partner State agrees to a cross-waiver of liability pursuant to which each Partner State waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Partner State;

(ii) A related entity of another Partner State;

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) In addition, each Partner State shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Liability Convention where the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Partner State and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

**§ 1266.103 Cross-waiver of liability during Shuttle operations.**

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to Shuttle launch services agreements and to other NASA agreements that involve Shuttle flights, and the parties' related entities, in the interest of encouraging participation in space exploration, exploitation, and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this cross-waiver, the term:

(1) *Party* means a person or entity that signs an agreement involving a Shuttle flight;

(2) *Related Entity* means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and *Subcontractors* include suppliers of any kind;

(3) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in the Shuttle; and

(5) *Protected Space Operations* means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of an agreement for Shuttle launch services. Protected Space Operations begin at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for Shuttle-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) Any Party who has signed a NASA agreement that includes a Shuttle flight;

(iii) A related entity of any party in paragraph (c)(1)(ii) of this section;

(iv) The employees of any of the entities identified in (c)(1)(i) through (c)(1)(iii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to

agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

### §1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to agreements for NASA ELV program launches, and the parties' related entities, in the interest of encouraging space exploration and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this section, the term:

(1) *Party* means a person or entity that signs an agreement involving an ELV launch;

(2) *Related Entity* means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) a contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and ''Subcontractors'' include suppliers of any kind.

(3) *Damage* means:

(i) Bodily injury to, or other impairment to health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in an ELV; and

(5) *Protected Space Operations* means all expendable launch vehicle and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the agreement. Protected Space Operations begins at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: expendable launch vehicles (ELV), transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for ELV-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waivers all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected

Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) A related entity of another Party;

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (ii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow-down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. app. 2615) is applicable.

# PART 1271—NEW RESTRICTIONS ON LOBBYING

### Subpart A—General

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APPENDIX A TO PART 1271—CERTIFICATION REGARDING LOBBYING
APPENDIX B TO PART 1271—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 97–258 (31 U.S.C. 6301 et seq.)

SOURCE: 55 FR 6737, 6748, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

## Subpart A—General

### § 1271.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative

ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

**§1271.105 Definitions.**

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4

of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

**§1271.110 Certification and disclosure.**

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## Subpart B—Activities by Own Employees

### § 1271.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 1271.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

### § 1271.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 1271.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent

to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

### §1271.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

## Subpart C—Activities by Other Than Own Employees

### §1271.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §1271.100(a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §1271.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

## Subpart D—Penalties and Enforcement

### § 1271.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

### § 1271.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

### § 1271.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

## Subpart E—Exemptions

### § 1271.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

## Subpart F—Agency Reports

### § 1271.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures

agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

### § 1271.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

## APPENDIX A TO PART 1271—CERTIFICATION REGARDING LOBBYING

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed

when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*Statement for Loan Guarantees and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 1271—DISCLOSURE FORM TO REPORT LOBBYING

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District,** *if known*:

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI)*:

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI)*:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply)*:
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

**Authorized for Local Reproduction Standard Form - LLL**

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

**Reporting Entity:** _____ **Page** _____ **of** _____

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Standard Form - LLL-A

# PART 1273—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451, et seq.

SOURCE: 60 FR 33694, June 29, 1995, unless otherwise noted.

## Subpart A—General

### § 1273.1 Purpose and scope of this part.

This subpart establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

### § 1273.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

### § 1273.3 Definitions.

As used in this part:

*Accrued expenditures* mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

*Accrued income* means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

*Acquisition cost* of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded

from the unit acquisition cost in accordance with the grantee's regular accounting practices.

*Administrative* requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from ''programmatic'' requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

*Awarding agency means:*

(1) With respect to a grant, the Federal agency, and

(2) With respect to a subgrant, the party that awarded the subgrant.

*Cash contributions* means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

*Contract* means (except as used in the definitions for ''grant'' and ''subgrant'' in this section and except where qualified by ''Federal'') a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

*Cost sharing or matching* means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

*Cost-type contract* means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

*Equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

*Expenditure report means:*

(1) For nonconstruction grants, the SF–269 ''Financial Status Report'' (or other equivalent report);

(2) For construction grants, the SF–271 ''Outlay Report and Request for Reimbursement'' (or other equivalent report).

*Federally recognized Indian tribal government* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

*Government* means a State or local government or a federally recognized Indian tribal government.

*Grant* means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

*Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

*Local government* means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

*Obligations* means the amounts of orders placed, contracts and subgrants awarded, goods and services received,

and similar transactions during a given period that will require payment by the grantee during the same or a future period.

*OMB* means the United States Office of Management and Budget.

*Outlays* (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

*Percentage of completion method* refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

*Prior approval* means documentation evidencing consent prior to incurring specific cost.

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

*Share*, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

*State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

*Subgrant* means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of ''grant'' in this subpart.

*Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

*Supplies* means all tangible personal property other than ''equipment'' as defined in this part.

*Suspension* means depending on the context, either

(1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant; or

(2) An action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

*Termination* means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. ''Termination'' does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

*Terms of a grant or subgrant* mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

*Third party in-kind contributions* mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

*Unliquidated obligations* for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

*Unobligated balance* means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

**§1273.4 Applicability.**

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §1273.6 or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and

subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 1273.4(a)(3) through (8) are subject to subpart E.

### § 1273.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1273.6.

### § 1273.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

## Subpart B—Pre-Award Requirements

### § 1273.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 factsheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

### § 1273.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations; or

(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

### § 1273.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

## Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

### § 1273.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance

with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

### § 1273.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for

advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless-

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §1273.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

### §1273.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

| For the costs of a | Use the principles in: |
|---|---|
| State, local or Indian tribal government | OMB Circular A–87. |
| Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular. | OMB Circular A–122. |
| Educational institutions | OMB Circular A–21. |
| For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular. | 48 CFR part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency. |

### § 1273.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

### § 1273.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) *Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement.* This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 1273.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1273.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was

derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired

with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1273.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition*. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property*. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

**§ 1273.25 Program income.**

(a) *General*. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income*. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income*. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues*. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties*. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1273.34).

(f) *Property*. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1273.31 and 1273.32.

(g) *Use of program income*. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g)(2) and (3) of this section, program

income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

### §1273.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, §1273.36 shall be followed.

[60 FR 33694, June 29, 1995, as amended at 62 FR 45939, 45940, Aug. 29, 1997]

## CHANGES, PROPERTY, AND SUBAWARDS

### §1273.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior

written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 1273.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative† transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1273.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1273.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

### § 1273.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

**§1273.32 Equipment.**

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §1273.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place

will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition*. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, or sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment*. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title*. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1273.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

**§ 1273.33 Supplies.**

(a) *Title*. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition*. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

**§ 1273.34 Copyrights.**

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

**§ 1273.35 Subawards to debarred and suspended parties.**

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

**§ 1273.36 Procurement.**

(a) *States.* When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees an subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item or nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such

use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1273.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services,

geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procurements are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by* sealed bids *(formal advertising*). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1273.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of: and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) *Procurement by competitive proposals.* The technique of competitive proposals is normally conducted with

more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular

procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §1273.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the

system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR part 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency,

the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

### §1273.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with §1273.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* by their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1273.10;

(2) Section 1273.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in §1273.21; and

(4) Section 1273.50.

## REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

### §1273.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports

shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

**§ 1273.41 Financial reporting.**

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters or credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of

reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 1273.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1273.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1)

Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1273.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1273.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1273.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1273.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1273.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1273.41(b)(2).

### § 1273.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1273.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

**§1273.43 Enforcement.**

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the award agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the

grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 1273.35).

### § 1273.44 Termination for convenience.

Except as provided in § 1273.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1273.43 or paragraph (a) of this section.

## Subpart D—After-The-Grant Requirements

### § 1273.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 1273.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

### § 1273.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1273.42;

(d) Property management requirements in §§ 1273.31 and 1273.32; and

(e) Audit requirements in § 1273.26.

### § 1273.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled

under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursement,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

## Subpart E—Entitlements [Reserved]

# PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

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APPENDIX A TO PART 1274—CONTRACT PROVISIONS
APPENDIX B TO PART 1274—REPORTS
APPENDIX C TO PART 1274—LISTING OF EXHIBITS

AUTHORITY: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

SOURCE: 61 FR 13398, Mar. 27, 1996, unless otherwise noted.

## Subpart A—General

### § 1274.101 Purpose.

(a) This part establishes uniform administrative requirements for NASA cooperative agreements awarded to commercial firms. Cooperative agreements are ordinarily entered into with commercial firms to—

(1) Support research and development,

(2) Provide technology transfer from the Government to the recipient, or

(3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness.

(b) An award may not be made to a foreign government. Award to foreign firms is not precluded. The approval of the Associate Administrator for Procurement is required to exclude foreign firms from submitting proposals.

### § 1274.102 Definitions.

*Administrator.* The Administrator or Deputy Administrator of NASA.

*Associate Administrator for Procurement.* The head of the Office of Procurement, NASA Headquarters (Code H).

*Cash contributions.* The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

*Closeout.* The process by which a NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

*Commercial item.* The definition in 48 CFR 2.101 (FAR) is applicable.

*Cooperative agreement.* As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This regulation covers only cooperative agreements with commercial firms. Cooperative agreements with universities and non-profit organizations are covered by 14 CFR part 1260.

*Cost sharing or matching.* That portion of project or program costs not borne by the Federal Government except that the recipient's contribution may be reimbursable under other Government awards as allowable IR&D costs pursuant to 48 CFR 1831.205–18 (NFS).

*Date of completion.* The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

*Days.* Calendar days, unless otherwise indicated.

*Government furnished equipment.* Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a Recipient and equipment procured by the Recipient with Government funds under a cooperative agreement.

*Grant Officer.* A Government employee who has been delegated the authority to negotiate, award, or administer grants or cooperative agreements. A Contracting Officer may serve as a Grant Officer if authorized by installation procurement regulations.

*Incremental funding.* A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

*Recipient.* An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, a consortium, a partnership, etc.

*Resource contribution.* The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

*Support contractor* means a NASA contractor performing part or all of the NASA responsibilities under a cooperative agreement.

*Suspension.* An action by NASA or the recipient that temporarily discontinues efforts under an award, pending corrective action or pending a decision to terminate the award. Suspension of

an award is a separate action from suspension under Federal agency regulations implementing Executive Order 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189 and Executive Order 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235, ''Debarment and Suspension.''

*Technical Officer.* The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement. A Contracting Officer's Technical Representative may serve as a Technical Officer.

*Termination.* The cancellation of a cooperative agreement in whole or in part, by either party at any time prior to the date of completion.

### §1274.103 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §1274.104.

### §1274.104 Deviations.

(a) *Exceptions.* The Associate Administrator for Procurement may grant exceptions for classes of or individual cooperative agreements from the requirements of this part when exceptions are not prohibited by statute.

(b) *Applicability.* A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

(2) When a provision is set forth in this part, but not prescribed for use verbatim, and the installation substitutes a provision which is inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this part, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) *Request for deviations.* Requests for authority to deviate from this regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum:

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought.

(2) Detailed rationale for the request, including any pertinent background information.

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request(s).

(5) A description of the intended effect of the deviation.

(6) A copy of legal counsel's concurrence or comments.

### §1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

(a) As soon as possible after the initial decision is made by a Headquarters program office or Center procurement personnel to use the CAN process, the cognizant program office or procurement office shall notify the Associate Administrator for Procurement (Code HS) of the intent to use a CAN in all cases where the total Government funds to be awarded in response to CAN proposals is expected to equal or exceed $10 million. All such notifications, as described below, shall be concurred in by the Procurement Officer. This requirement also applies in those cases where an unsolicited proposal is received and a decision is made to award a cooperative agreement in which the recipient (or one or more members of a ''team'' of recipients) is a commercial firm and the total Government funds are expected to equal or exceed $10 million.

(b) The required notification is to be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: can@mercury.hq.nasa.gov. The notification must include the following information, as a minimum:

(1) Identification of the cognizant center and program office;

(2) Description of the proposed program for which proposals are to be solicited;

(3) Rationale for decision to use a CAN rather than other types of solicitations;

(4) The amount of Government funding to be available for awards;

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN;

(6) The percentage of cost-sharing to be required; and

(7) Tentative schedule for release of CAN and award of cooperative agreements.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer, within 5 working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described;

(2) Whether Code HS will require review and approval of the CAN before its issuance;

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)); and

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or center may proceed with release of the CAN and award of the cooperative agreements as described.

## Subpart B—Pre-Award Requirements

### § 1274.201 Purpose.

Sections 1274.202 through 1274.207 prescribe forms and instructions and address other pre-award matters.

### § 1274.202 Solicitations and proposals.

(a) Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible. An award will normally be made as a result of a Cooperative Agreement Notice (CAN) which envisions a cooperative agreement as the award instrument. A Commerce Business Daily synopsis or a synopsis on the NASA Acquisition Internet Service will be used to publicize the CAN.

(b) *Unsolicited Proposals.* (1) An award may be made as a result of an unsolicited proposal. The unsolicited proposal must evidence a unique and innovative idea or approach which is not the subject of a current or anticipated solicitation. When a cooperative agreement is awarded as a result of an unsolicited proposal, a Commerce Business Daily synopsis or a synopsis on the NASA Acquisition Internet Service will be used to provide an opportunity for other firms/consortia to express an interest in the agreement unless the exception in 48 CFR 5.202(a)(8) (FAR) applies. Respondents should be given a minimum of thirty days to respond. If interest is expressed, a decision must be made to proceed with the award or to issue a solicitation for competitive proposals.

(2) Prior to an award made as the result of an unsolicited proposal, the award must be approved by the Procurement Officer if NASA's total resource contribution is below $5 million. Center Director approval is required if NASA's total resource contribution is $5 million or more. For Headquarters cooperative agreements, approval by the Associate Administrator for Procurement is required if NASA's total resource contribution is $5 million or more.

(c) *Cost and payment matters.* (1) The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient shall be governed by the FAR cost principles, 48 CFR part 31. If the Recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122,

''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(2) A substantial resource contribution on the part of the Recipient is required. The Recipient is expected to contribute at least 50% of the total resources required to accomplish the cooperative agreement. Recipient contributions may be either cash or noncash or both. In those cases in which a contribution of less than 50% is anticipated from the Recipient, approval of the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50% is warranted.

(3) Cooperative agreements are funded by NASA in a fixed amount. Payments in fixed amounts will be made by NASA in accordance with ''Milestone Billings'' which are discussed in paragraph (c)(4) of this section. If the Recipient completes the final milestone, final payment is made, and NASA will have completed its financial responsibilities under the agreement. However, if the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding will be limited to milestone payments already made plus NASA's share of costs required by the Recipient to meet commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event shall these additional costs or payment exceed the amount of the next payable milestone billing amount.

(4) Milestone billings is the method of payment to the Recipient under cooperative agreements. Performance based milestones are used as the basis of establishing a set of verifiable milestones for payment purposes. Each milestone payment shall be established so that the Government payment is at the same share ratio as the cooperative agreement share ratio. If the Recipient is a consortium, the Articles of Collaboration is required to contain an extensive list of performance based milestones that the consortium has agreed to. Generally, payments should not be made more than once monthly; ideally, payments will be made about every 60 to 90 days but in all cases should be made on the basis of verifiable, significant events as opposed to the passage of time. The last payment milestone should be large enough to ensure that the Recipient completes its responsibilities under the cooperative agreement (or funds should be reserved for payment until after completion of the cooperative agreement). The Government technical officer must verify completion of each milestone to the Grants Officer as part of the payment process. If the Government's projected cash contribution to a cooperative agreement exceeds $5 million, approval of the Milestone Payment clause, including the milestones and anticipated payments, by the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should contain substantially the same information required by 48 CFR (NFS) 1832.7006.

(5) Cooperative agreements may be incrementally funded subject to the following:

(i) The total value of the NASA cash contribution is $50,000 or more.

(ii) The period of performance overlaps the succeeding fiscal year.

(iii) The funds are not available to fully fund the cooperative agreement at the time of award.

(6) Cost sharing requirements on cooperative agreements with commercial firms are based on section 23 of OMB Circular A–110, November 23, 1993. Only cash or certain non-cash resources are acceptable sources for the Recipient contribution to a cooperative agreement. Acceptable non-cash resources

include such items as purchased equipment, equipment, labor, office space, etc. The actual or imputed value of intellectual property such as patent rights, data rights, trade secrets, etc., are not acceptable as sources for the Recipient contribution.

(7) Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the Recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship.

(8) The Recipient's resource share of the cooperative agreement may be allocated as part of its IR&D program in accordance with a class deviation pursuant to 48 CFR 1831.205–18 (NFS).

(9) The CAN must provide a description of the non-cash Government contribution (personnel, equipment, facilities, etc.) as part of the Government's contribution to the cooperative agreement in addition to funding. The offeror may propose that additional non-cash Government resources be provided under two conditions. First, the offeror is responsible for verifying the availability of the resources and their suitability for their intended purpose and, second, those resources are part of the Government contribution (which must be matched by the Recipient) and paid for directly by the awarding organization.

(d) *Consortia as recipients.* (1) The use of consortia as Recipients for cooperative agreements is encouraged. Consortia will tend to bring to a cooperative agreement a broader range of capabilities and resources. A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms which normally compete for commercial or Government business or may be made up of firms which perform complementary functions in a given industry. The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(2) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. It should also address to the extent appropriate: commitments of financial, personnel, facilities and other resources, a detailed milestone chart of consortium activities, accounting requirements, subcontracting procedures, disputes, term of the agreement, insurance and liability issues, internal and external reporting requirements, management structure of the consortium, obligations of organizations withdrawing from the consortia, allocation of data and patent rights among the consortia members, agreements, if any, to share existing technology and data, the firm which is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, employee policy issues, etc.

(3) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process.

(e) *Metric system of measurement.* The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce.

### § 1274.203 Intellectual property.

(a) A cooperative agreement covers the disposition of rights relating to inventions and patents between NASA and the Recipient. If the Recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) Patent rights clauses are required by statute and regulation. The clauses exist for Recipients of the Agreement whether they are:

(1) Other than small business or non-profit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) There are five situations in which inventions may arise under a cooperative agreement: Recipient Inventions, Subcontractor Inventions, NASA Inventions, NASA Support Contractor Inventions, and Joint Inventions with Recipient.

(d)(1) *Recipient inventions.* (i) A Recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term *invention* includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business Recipient initially vests with NASA. The Recipient may request a waiver under the NASA Patent Waiver Regulations to obtain title to inventions made under the Agreement. Such a request may be made in advance of the Agreement (or 30 days thereafter) for all inventions made under the Agreement. Alternatively, requests may be made on a case by case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) A Recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term *nonprofit organization* is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code. The Government obtains an irrevocable, nonexclusive, royalty-free license.

(2) *Subcontractor inventions*—(i) *Large business.* If a Recipient enters a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the Agreement to be done in the United States, its possessions, or Puerto Rico, section 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business Recipient can (see paragraph (d)(1)(i) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the Recipient, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) *Non-profit organization or small business.* In the event the Recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under the Agreement, the requirements of 35 U.S.C. 200 *et seq.* regarding ''Patent Rights in Inventions Made With Federal Assistance,'' apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the Agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(iii) *Work outside the United States.* If the Recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(iv) *Additional rights.* Notwithstanding paragraphs (d)(1) and (d)(2) (i) through (iii) of this section, and in recognition of the Recipient's substantial contribution, the Recipient is authorized, subject to rights of NASA set forth elsewhere in the Agreement, to:

(A) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary, or

(B) If unable to reach agreement pursuant to paragraph (d)(2)(iv)(A) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the Recipient. This exception does not change that. The exception does authorize the Recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(3) *NASA inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an Agreement. Upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(4) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under the Agreement since the rights obtained by a NASA support contractor could work against the rights needed by the Recipient. In the event NASA support contractors are tasked to work under the Agreement and inventions are made by support contractor employees, the support contractor will normally obtain rights in such inventions. However, if NASA has the right to acquire or has acquired title to such inventions, upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(5) *Joint inventions.* (i) NASA and the Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of Recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e). The grant officer negotiating the Agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(ii) NASA support contractors may be joint inventors. If a NASA support contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA Support Contractor Inventions. The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a Recipient employee, the NASA support contractor

and Recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the Recipient.

(e) *Licenses to recipient(s).* (1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, all Recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the Recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each Recipient subject invention, it is only equitable that the Recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) *Notice requirements.* Once a Recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the Recipient, is published in the FEDERAL REGISTER, providing the public opportunity for filing written objections for 60 days.

(f) *Preference for United States manufacture.* Despite any other provision, the Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the Recipient as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Associate Administrator for Procurement (Code HS) upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(g) *Space Act agreements.* Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act Agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(h) *Data rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at §1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that ''proprietary'' information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, grant officers for the Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the Recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable

time period (depending on the technology, two to five years after production of the data) may be established after which the data first produced by the Recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas need to be covered.

(4) For data, including software, first produced by the Recipient under the agreement, the Recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled ''Publication and Reports.'' Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the Recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

**§ 1274.204 Evaluation and selection.**

(a) *General.* A single technical evaluation factor is typically used for CANs. That evaluation factor should be one of the following: providing research and development or technology transfer, enhancing U.S. competitiveness, or developing a capability among U.S. firms. Award to foreign firms is not precluded if the evaluation factor is satisfied. Subfactors could include such things as fostering U.S. leadership, potential to advance technologies anticipated to enhance U.S. competitiveness, timeliness of proposed accomplishments, private sector commitment to commercialization, identification of specific potential commercial markets, appropriateness of business risk, potential for broad impact on the U.S. technology and knowledge base, level of commitment (contribution of private resources to the project), appropriateness of team member participation and relationships, appropriateness of management planning, relevant experience, qualifications and depth of management and technical staff, quality and appropriateness of resources committed to the project, performance bench marks, technical approach, business approach/resource sharing, past performance, the articles of collaboration, etc.

(b) *Technical evaluation.* (1) Competitive technical proposal information shall be protected in accordance with 48 CFR 15.411 (FAR), Receipt of Proposals and quotations. Unsolicited proposals shall be protected in accordance with 48 CFR 15.508 (FAR), Prohibitions, and 48 CFR 15.509 (FAR), Limited use of data.

(2) The technical officer will evaluate proposals in accordance with the criteria in the CAN. Proposals selected for award will be supported by documentation as described in paragraph (c)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(3) The technical evaluation of proposals may include peer reviews. Since the business sense of a cooperative agreement proposal is critical to its

success, NASA should reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions. The use of outside evaluators shall be approved in accordance with 48 CFR 1815.413–2(c)(2) (NFS). It is strongly recommended that a numerical scoring system be established to rank proposals. Data provided to outside evaluators should be protected in accordance with 48 CFR 1815.413–2(e) (NFS).

(4) Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Organizations submitting unaccepted proposals will be notified in writing.

(c) *Documentation requirements.* For proposals selected for award, the technical officer will prepare and furnish to the grant officer the following documentation:

(1) For a competitively selected proposal, a signed selection statement and technical evaluation based on the evaluation criteria stated in the solicitation.

(2) For an unsolicited proposal, a justification for acceptance of an unsolicited proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(i) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(ii) Overall scientific or technical merits of the proposal.

(iii) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iv) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(v) Current, open solicitations under which the unsolicited proposal could be evaluated.

(d) *Cost evaluation.* (1) The grant officer and technical team will determine whether the overall proposed cost of the project is reasonable and that the Recipient's contribution is valid, verifiable, and available. Commitments should be obtained and verified to the extent practical from the offeror or members of the consortia that the proposed contributions can and will be made as specified in the proposal or statement of work.

(i) If the Recipient's verified share on a cooperative agreement equals or exceeds 50% of the total cost of the agreement and the total value of the agreement is less than $5 million, the cost evaluation of the offeror's proposal should focus on the overall reasonableness and timing of the proposer's contribution. Cost or pricing data should not be required and information other than cost or pricing data (defined in 48 CFR 15.801) (FAR) should not normally be required.

(ii) If the Recipient's share is projected to be less than 50% or the total value of the agreement is more than $5 million, a more in-depth analysis of the proposed costs should be undertaken. Only information other than cost or pricing data should be required. An analysis consistent with 48 CFR 15.805–3 through 15.805–5 (FAR) should be performed.

(2) As part of the evaluation of the cost proposal, the source of the recipient's contribution should be determined. Each of the cost elements contributed by the recipient and their amounts should be identified. If the contribution will consist at least in part of IR&D, the extent to which the IR&D may be recoverable from Government awards should be established. This will involve using the estimated Government participation rate of the recipient's General and Administrative indirect cost base for the period of the cooperative agreement. The results of the evaluation are to be documented in the cooperative agreement file.

(e) *Consortium.* If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(f) *Printing, binding, and duplicating.* Proposals for effort which involve printing, binding, and duplicating in excess of 25,000 pages are subject to the Government Printing and Binding Regulations, No. 26, February 1990, S. Pub. 101–9, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800, published by the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO). The grant officer will be advised in writing of the results of the ICPMO review.

### § 1274.205 Award procedures.

(a) *General.* Multiple year cooperative agreements are encouraged, but normally they should not extend beyond two years.

(b) *Award above proposed amount.* Awards of cooperative agreements in response to competitive solicitations will not result in providing more NASA funds or resources than was anticipated in the Recipient's proposal. If additional funds or resources are deemed necessary, they will be provided by the Recipient and the Government cost share percentage will be adjusted downward.

(c) *Changes to cooperative agreements.* Cost growth or in-scope changes shall not increase the amount of NASA's contribution. Additional costs which arise during the performance of the cooperative agreement are the responsibility of the Recipient. Funding for work required beyond the scope of the cooperative agreement must be sought through the submission of a proposal which will be treated as an unsolicited proposal.

(d) *Bilateral award.* All cooperative agreements awarded under this regulation will be awarded on a bilateral basis.

(e) *Certifications and representations*—(1) *General.* Unless prohibited by statute or codified regulation, Recipients will be encouraged to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the Recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure Recipients' compliance with the pertinent requirements.

(2) Civil rights requirements—nondiscrimination in certain Federally-funded programs. Recipients must furnish assurances of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each cooperative agreement, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained from the grant officer. Upon acceptance, the grant officer will forward assurances to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(3) *Debarment certification.* NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by §§ 1265.110 and 1265.610.

(4) *Lobbying certification.* A Lobbying Certification in accordance with 14 CFR part 1271 will be obtained prior to award.

(f) *Indemnification.* Indemnification under Public Law 85–804, as amended (50 U.S.C. 1431 *et seq.*) is not authorized for cooperative agreements.

### § 1274.206 Document format and numbering.

(a) *Formats.* Grant officers are authorized to use the format in exhibit A of appendix C of this part for the award of all cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed.

(b) *Cooperative agreement numbering.* The identification numbering system for all cooperative agreements shall conform to 48 CFR 1804.7102–3 (NFS), except that a NCC prefix will be used in lieu of the NAS prefix.

### §1274.207 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934, and any other appropriate recipient. Copies of the statement of work, contained in the Recipient's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

## Subpart C—Administration

### §1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity.

### §1274.302 Transfers, novations, and change of name agreements.

(a) *Transfer of cooperative agreements.* Novation is the only means by which a cooperative agreement may be transferred from one Recipient to another.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the Recipient, prior to execution, shall be reviewed by NASA legal counsel for legal sufficiency prior to approval.

## Subpart D—Government Property

### §1274.401 Government property.

The accomplishment of a cooperative agreement may require the purchase of equipment for a wide range of purposes. If this equipment is purchased with Government funds, i.e., as part of the Government contribution to the cooperative agreement, it becomes Government property and must be disposed of in accordance with 48 CFR part 45 (FAR) at the conclusion of the cooperative agreement. In some cases, this may meet the needs of the parties. If, however, the Recipient may need the equipment to continue commercial efforts following the cooperative agreement, it should be purchased by the Recipient and included as a non-cash contribution of the Recipient. In this way, it is not procured, not even in part, with Government funds and the Government acquires no ownership interest. Procurement by the Recipient may be before or during the performance of the cooperative agreement.

## Subpart E—Procurement Standards

### §1274.501 Subcontracts.

Recipients are not authorized to issue grants or cooperative agreements to subrecipients. All contracts, including small purchases, awarded by Recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable and may be subject to approval requirements cited in §1274.925.

## Subpart F—Reports and Records

### §1274.601 Retention and access requirements for records.

(a) This subpart sets forth requirements for record retention and access to records for awards to Recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from Recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for Recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on Recipients that limit public access to the records of Recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) This paragraph (g) applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation*. If the Recipient submits to NASA or the subrecipient submits to the Recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation*. If the Recipient is not required to submit to NASA or the subrecipient is not required to submit to the Recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

## Subpart G—Suspension or Termination

### § 1274.701 Suspension or termination.

A cooperative agreement provides both NASA and the Recipient the ability to terminate the agreement if it is in their best interests to do so. For example, NASA may terminate the agreement if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program. Similarly, the Recipient may terminate the agreement if, for example, technical progress is not being made, if the firms are shifting their technical emphasis, or if other technological advances have made the effort obsolete. NASA or the Recipient may also suspend the cooperative agreement for a short period of time if an assessment needs to be made as to whether the agreement should be terminated.

## Subpart H—After-the-Award Requirements

### § 1274.801 Purpose.

Sections 1274.802 and 1274.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

### § 1274.802 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may

be approved when requested by the Recipient.

(b) The Recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with subpart D of this part.

### §1274.803 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in §1274.933.

(b) Property management requirements in subpart D of this part.

(c) Records retention as required in §1274.601.

## Subpart I—Other Provisions and Special Conditions

### §1274.901 Other provisions and special conditions.

The provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements. The provisions at §§1274.902 through 1274.909 are to be incorporated in full text substantially as stated in this part. The provisions at §§1274.910 through 1274.933 will be by reference incorporated in an enclosure to each cooperative agreement (see exhibit A of appendix C of this part). For inclusion of provisions in subcontracts, see Subpart E—Procurement Standards of this part.

### §1274.902 Purpose.

PURPOSE (FEB 1996)

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to _____. This cooperative agreement will advance the technology developments and research which have been performed on _____. The specific objective is to _____. This work will culminate in _____.

[End of provision]

### §1274.903 Responsibilities.

RESPONSIBILITIES (FEB 1996)

(a) This cooperative agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) *NASA responsibilities.* Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement. The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

*Responsibility Start End*

(c) *Recipient responsibilities.* The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto.). The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

*Responsibility Start End*

[End of provision]

### §1274.904 Resource Sharing Requirements.

RESOURCE SHARING REQUIREMENTS (FEB 1996)

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a ___ (NASA) - ___ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by section 23, ''Cost Sharing or Matching,'' of OMB Circular A–110. The ''applicable federal cost principles'' cited in OMB Circular A–110 shall be determined in accordance with §1274.919.

(b) The Recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to 48 CFR 1831.205–18 (NFS).

### §1274.905 Rights in Data.

RIGHTS IN DATA (FEB 1996)

(a) *Definitions.*

Data, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and

data comprising commercial and financial information.

(b) *Data categories*—(1) *General.* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided in paragraphs (b)(2) through (6) of this provision.

(2) *Background data.* In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) *Data first produced by Recipient.* In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of [insert ''two'' to ''five''] years after development of the data and be disclosed and used by [''NASA'' or ''the Government,'' as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of [''NASA'' or ''the Government'' as appropriate] during that period. In order that [''NASA'' or the ''Government'', as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA.* As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to (—) years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires.

(5) *Copyright.* (i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this provisiion, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) *Oral and visual information.* If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) *Disclaimer of Liability.* Notwithstanding paragraphs (6)(2) through (6) of this provision, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this provision; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this provision, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of data.* Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower Tier Agreements.* The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

[End of provision]

## §1274.906 Designation of New Technology Representative and Patent Representative.

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (FEB 1996)

(a) For purposes of administration of the clause of this cooperative agreement entitled ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)'' or ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)'' the following named representatives are hereby designated by the Grant Officer to administer such clause:

| *Title* | *Office Code* | *Address* |
|---|---|---|
| NEW TECHNOLOGY REPRESENTATIVE | | |
| PATENT REPRESENTATIVE | | |

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)'' clause or ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)'' clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 48 CFR 1827.375–3 (NFS).

[End of provision]

## §1274.907 Disputes.

DISPUTES (FEB 1996)

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the _____ [Suggest this be the Center Director], who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at the same time. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after receiving this notification that a decision has been requested. The Dispute Resolution Official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.

[End of provision]

## §1274.908 Milestone Payments.

MILESTONE PAYMENTS (FEB 1996)

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for payments

may be based upon the Recipient's completion of specific tasks, submission of specified reports, or whatever is appropriate.] *Date Payment Milestone Amount*

(c) Upon submission by the Recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the grant officer shall authorize payment.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this provision. However, payment shall not be made prior to that date without the written consent of the Grant Officer.

(e) The Recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) All preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) Invoices hereunder shall be submitted in the original and five copies to the Grant Officer for certification.

[End of provision]

## § 1274.909 Term of this Agreement.

TERM OF THIS AGREEMENT (FEB 1996)

The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

[End of provision]

## § 1274.910 Authority.

AUTHORITY (FEB 1996)

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451 *et seq.* (the Space Act).

[End of provision]

## § 1274.911 Patent Rights.

PATENT RIGHTS (FEB 1996)

(a) *Definitions.*

(1) *Administrator* means the Administrator or Deputy Administrator of NASA.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(3) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Recipient* means: (i) The signatory Recipient party or parties; or (ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) *Small business firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject invention* means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) *Allocation of principal rights.* (1) *Recipient inventions.* For other than Small Business Firm or Nonprofit organization Recipients, the ''PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)'' provision applies. For Small Business Firm and Nonprofit organization Recipients, the ''PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)'' provision applies.

(2) *NASA inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any

patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this provision. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) *NASA contractor inventions.* In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this provision. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) *Joint NASA and recipient inventions.* NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this provision.

(ii) For small business firms and nonprofit organizations, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) *Minimum rights reserved by the Government.* Any license or assignment granted Recipient pursuant to paragraph (b)(2), (b)(3), or (b)(4) of this provision will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this provision, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered ''by or for the United States'' and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

[End of provision]

## § 1274.912 Patent Rights—Retention by the Recipient (Large Business).

PATENT RIGHTS—RETENTION BY THE RECIPIENT (LARGE BUSINESS) (FEB 1996)

(a) *Definitions.*

(1) *Administrator* means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) *Made,* as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Reportable item* means any invention, discovery, improvement, or innovation of the Recipient, whether or not the same is or may be patentable or otherwise protectable under title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) *Small business firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject invention means* any reportable item which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq*).

(b) Allocation of principal rights—(1) *Presumption of title*—(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Grants Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this provision. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this provision is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) *Waiver of rights*—(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the contract or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient may petition for waiver of rights

to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this provision or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) *Minimum rights reserved by the Government.* (1) With respect to each Recipient subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Recipient.* (1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Recipient subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this provision. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Grants Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Grants Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Grants Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Grants Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this provision have been followed.

(ii) A final report, within three months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Grants Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to 48 CFR 27.302(j) (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Grants Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this cooperative agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this provision; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Grants Officer learns of an unreported Recipient invention that the Grants Officer believes may be a subject inventions, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Grants Officer, the Recipient shall—

(i) Include this Clause Patent Rights—Retention by the Recipient—(Large Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Recipient—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grants Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grants Officer.

(3) The Recipient shall promptly notify the Grants Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grants Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause of paragraph (g)(1)(i) or (1)(ii) of this provision, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this provision, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this provision, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be

included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances.* A request that NASA make an ''exceptional circumstances'' determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

[End of provision]

## §1274.913 Patent Rights—Retention by the Recipient (Small Business).

PATENT RIGHTS—RETENTION BY THE RECIPIENT (SMALL BUSINESS) (FEB 1996)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.901 through 121.911 will be used.

(6) *Subject invention* means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) *Allocation of principal rights.* The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this

clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Recipient.* (1) The Recipient will disclose each subject invention to NASA within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this provision may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Recipient will convey to NASA, upon written request, title to any subject invention—

(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this provision, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this provision; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this provision, but prior to its receipt of the written request of the Federal agency, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Recipient and protection of the Recipient right to file.* (1) The Recipient will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph (c) of this provision. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have

failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and 14 CFR part 1245, subpart 2, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Recipient action to protect the Government's interest.* (1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) of this provision and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this provision, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this provision. The Recipient shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention the following statement, ''This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention.''

(5) The Recipient shall provide the Grants Officer the following:

(i) A listing every 12 months (or such longer period as the Grants Officer may specify) from the date of the Agreement, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the Agreement listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Recipient has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Grants Officer, the Recipient shall—

(i) Include this clause (Patent Rights—Retention by the Recipient (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization.

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Recipient (Large Business)).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grants Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grants Officer.

(3) The Recipient shall promptly notify the Grants Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grants Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this provision, whichever is included in the subcontract, and the Recipient will not, as part

of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this provision, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this provision that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances.* A request that NASA make an ''exceptional circumstances'' determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) *Reporting on utilization of subject inventions.* The Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this provision. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Recipient.

(i) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that——

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Recipient is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which

has one of its primary functions the management of inventions; *provided,* that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Recipient could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(l) A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the cooperative agreement. If any reports contain information describing a ''subject invention'' for which the Recipient has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Recipient identify the information and the ''subject invention'' to which it relates at the time of submittal. If required by the Grants Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any ''subject invention'' in any country in which the Recipient has applied for patents.

[End of provision]

## §1274.914 Requests for Waiver of Rights—Large Business.

REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS (FEB 1996)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected Recipient. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific Section or Sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Grants Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Grants Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will

recommend to the Administrator that waiver be granted, and will notify the petitioner and the Grants Officer of the Administrator's determination. The Grants Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Grants Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in 14 CFR 1245.112(b).

[End of provision]

### § 1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

RESTRICTIONS ON SALE OR TRANSFER OF TECHNOLOGY TO FOREIGN FIRMS OR INSTITUTIONS (FEB 1996)

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers do not include:

(1) Sales of products or components;

(2) Licenses of software or documentation related to sales of products or components; or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Grants Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

[End of provision]

### § 1274.916 Liability and Risk of Loss.

LIABILITY AND RISK OF LOSS (FEB 1996)

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

[End of provision]

### § 1274.917 Additional Funds.

ADDITIONAL FUNDS (FEB 1996)

Pursuant to this agreement, NASA is providing a fixed amount of funding for activities to be undertaken under the terms of this cooperative agreement. NASA is under no obligation to provide additional funds. Under no circumstances shall the Recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement.

[End of provision]

### § 1274.918 Incremental Funding.

INCREMENTAL FUNDING (FEB 1996)

(a) Of the award amount indicated on the cover page of this agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA anticipates making additional allotments of funds as required,

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.

[End of provision]

### § 1274.919 Cost Principles and Accounting Standards.

COST PRINCIPLES AND ACCOUNTING STANDARDS (FEB 1996)

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled ''Resource Sharing Requirements'') shall be governed by the FAR cost principles, 48 CFR part 31.

(If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'') Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

[End of provision]

## §1274.920 Responsibilities of the NASA Technical Officer.

RESPONSIBILITIES OF THE NASA TECHNICAL OFFICER (FEB 1996)

(a) The NASA Grant Administrator and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Grant Specialist shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the terms and conditions of this cooperative agreement.

[End of provision]

## §1274.921 Publications and Reports: Non-Proprietary Research Results.

PUBLICATIONS AND REPORTS: NON-PROPRIETARY RESEARCH RESULTS (FEB 1996)

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement, shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.

(c) Prior approval by the NASA Technical Officer is required only where the Recipient requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. The Recipient shall submit the following technical reports:

(1) A performance report for every year of the cooperative agreement (except the final year). Each report is due 60 days before the anniversary date of the cooperative agreement and shall describe research accomplished during the report period.

(2) A summary of research, which is due by 90 days after the expiration date of the cooperative agreement, regardless of whether or not support is continued under another cooperative agreement. This report is intended to summarize the entire research accomplished during the duration of the cooperative agreement.

(e) Performance reports and summaries of research shall display the following on the first page:

(1) Title of the cooperative agreement.

(2) Type of report.

(3) Period covered by the report.

(4) Name and address of the Recipient's organization.

(5) Cooperative agreement number.

(f) An original and two copies, one of which shall be of suitable quality to permit microreproduction, shall be sent as follows:

(1) Original—Grant Officer.

(2) Copy—Technical Officer.

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934.

[End of provision]

### § 1274.922 Suspension or Termination.

SUSPENSION OR TERMINATION (FEB 1996)

(a) This cooperative agreement may be suspended or terminated in whole or in part by the Recipient or by NASA after consultation with the other party. NASA may terminate the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program.

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.

[End of provision]

### § 1274.923 Equipment and Other Property.

EQUIPMENT AND OTHER PROPERTY (FEB 1996)

(a) NASA cooperative agreements permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) Recipients may not purchase, as a direct cost to the cooperative agreement, items of non-technical property, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the Recipient requests an exception, the Recipient shall submit a written request for Grant Officer approval, prior to purchase by the Recipient, stating why the Recipient cannot charge the property to indirect costs.

(c) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR 45.301 (FAR)), or to procure passenger carrying vehicles.

(d) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR 45.603 (FAR). The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the cooperative agreement.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government pursuant to 14 CFR 1260.408(d) prior to completion of the work) will remain with the Government.

(f) The Recipient shall establish and maintain property management standards for nonexpendable personal property and otherwise manage such property as set forth in 14 CFR 1260.507.

(g) Annually by October 31, the Recipient shall submit 2 copies of an inventory report which lists all Government furnished equipment and equipment acquired with Government funds in their custody as of September 30. The Recipient shall submit 2 copies of a final inventory report by 60 days after the expiration date of the cooperative agreement. The final inventory report shall contain a list of all Recipient acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in 14 CFR 1260.507(a)(1) (i), (ii), (iii), (v) through (viii) and beginning and ending dollar value totals for the reporting period and be submitted to the grant officer. When Government furnished equipment is no longer needed, the Recipient shall notify the Grants Officer, who will provide disposition instructions.

[End of provision]

### § 1274.924 Civil Rights.

CIVIL RIGHTS (FEB 1996)

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

[End of provision]

## §1274.925 Subcontracts.

SUBCONTRACTS (FEB 1996)

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Grant Officer consent is required for subcontracts over $100,000, if not accepted by NASA in the original proposal. The Recipient shall provide the following information to the Grant Officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(c) The Recipient shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

[End of provision]

## §1274.926 Clean Air-Water Pollution Control Acts.

CLEAN AIR-WATER POLLUTION CONTROL ACTS (FEB 1996)

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Grant Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA ''List of Violating Facilities'' published pursuant to 40 CFR 15.20. By acceptance of a cooperative agreement in excess of $100,000, the Recipient:

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA ''List of Violating Facilities'' as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 7414) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the cooperative agreement; and

(c) Agrees to include the criteria and requirements of this provision in every subcontract hereunder in excess of $100,000, and to take such action as the Grant Officer may direct to enforce such criteria and requirements.

[End of provision]

## §1274.927 Debarment and Suspension and Drug-Free Workplace.

DEBARMENT AND SUSPENSION AND DRUG-FREE WORKPLACE (FEB 1996)

NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.

[End of provision]

## §1274.928 Foreign National Employee Investigative Requirements.

FOREIGN NATIONAL EMPLOYEE INVESTIGATIVE REQUIREMENTS (FEB 1996)

(a) The Recipient shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the cooperative agreement requires a foreign national to be given access immediately, the Technical Officer may submit an escort request to the Installation's Chief of Security.

[End of provision]

## §1274.929 Restrictions on Lobbying.

RESTRICTIONS ON LOBBYING (FEB 1996)

This award is subject to the provisions of 14 CFR part 1271 ''New Restrictions on Lobbying.''

[End of provision]

## § 1274.930 Travel and Transportation.

TRAVEL AND TRANSPORTATION (FEB 1996)

(a) For travel funded by the government under this agreement, section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires the Recipient to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.

[End of provision]

## § 1274.931 Electronic Funds Transfer Payment Methods.

ELECTRONIC FUNDS TRANSFER PAYMENT METHODS (FEB 1996)

Payments under this cooperative agreement will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH)), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Grant Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account (''C'' for checking, ''S'' for savings).

(4) If the Recipient is a new enrollee to the ACH system, a ''Payment Information Form,'' SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

(e) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

[End of Provision]

## § 1274.932 Retention and Examination of Records.

RETENTION AND EXAMINATION OF RECORDS (FEB 1996)

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this cooperative agreement shall be retained for a period of 3 years, except that records for nonexpendable property acquired with cooperative agreement funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All requirements of this provision shall apply to any subcontractor performing substantive work under this cooperative agreement.

[End of provisions]

## APPENDIX A TO PART 1274—CONTRACT PROVISIONS

All contracts awarded by a Recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with Executive Order 11246, 30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p. 339, Executive Order 11375, 32 FR 14199, 3 CFR, 1966–1970 Comp., p. 684, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts in excess of $50,000 for construction or repair awarded by Recipients and subRecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each Recipient or subRecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient shall report all suspected or reported violations to NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by Recipients in excess of $2,000 for construction contracts and in excess of $50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each Recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

5. Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*) Contracts, other than contracts for commercial items, of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (Executive Orders 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

## APPENDIX B TO PART 1274—REPORTS

*1. Individual procurement action report (NASA Form 507).* The grant officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

*2. Inventory listings of equipment.* As provided in paragraph (g) of the provision in § 1274.923, an annual inventory listing of government furnished equipment will be submitted by October 31 of each year. Upon receipt of each annual inventory listing, the administrative grant officer will provide 1 copy to the NASA installation financial management officer and 1 copy to the NASA installation industrial property officer. A final inventory report of Government furnished equipment and grantee acquired equipment is due 60 days after the end of the cooperative agreement, in accordance with the provision in 31274.923. Upon receipt of the final inventory report, the administrative grant officer will provide 1 copy to the technical officer and 1 copy to the NASA Installation industrial property officer.

*3. Disclosure of lobbying activities (SF LLL).* (a) Grant officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

## APPENDIX C TO PART 1274—LISTING OF EXHIBITS

### EXHIBIT A—FORMAT FOR COOPERATIVE AGREEMENT

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
COOPERATIVE AGREEMENT

1. TO:

2. COOPERATIVE AGREEMENT NO.:
3. SUPPLEMENT NO.:
4. EFFECTIVE DATE:
5. EXPIRATION DATE:

6. FOR RESEARCH ENTITLED:

7. AWARD HISTORY
PREVIOUS AMOUNT:
THIS ACTION:
TOTAL TO DATE:

FUNDING HISTORY
PREVIOUS OBLIGATION:
THIS ACTION:
TOTAL TO DATE:

8. NASA PROCUREMENT REQUEST NO.:
PPC CODE.: APPROPRIATION:

9. POINTS OF CONTACT:

TECHNICAL OFFICER:

GRANT ADMINISTRATOR:

PAYMENT:

10. This cooperative agreement is awarded under the authority of 42 U.S.C. 2473(c)(5), and is subject to all applicable laws and regulations of the United States in effect on the date this cooperative agreement is awarded, including but not limited to 14 CFR Part 1274 (Cooperative Agreements with Commercial Firms).

UNITED STATES OF AMERICA

_____
XXXX XXXXXXXXXX
GRANTS OFFICER

DATE: _____

Recipient

_____
XXXXXXXXXXX XXXXXXXXXXXX
AUTHORIZED REPRESENTATIVE

DATE: _____

Enclosures
(As Required)