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CODE OF FEDERAL REGULATIONS

Title 14
Aeronautics and Space

Part 1200 to End

Revised as of January 1, 2015

Containing a codification of documents
of general applicability and future effect

As of January 1, 2015

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Cite this Code: CFR

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Title 17 through Title 27.....as of April 1
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Title 42 through Title 50.....as of October 1

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An index to the text of ''Title 3—The President'' is carried within that volume.

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AMY P. BUNK,
Acting Director,
Office of the Federal Register.
January 1, 2015.

THIS TITLE

Title 14—AERONAUTICS AND SPACE is composed of five volumes. The parts in these volumes are arranged in the following order: Parts 1–59, 60–109, 110–199, 200–1199, and part 1200–End. The first three volumes containing parts 1–199 are comprised of chapter I—Federal Aviation Administration, Department of Transportation (DOT). The fourth volume containing parts 200–1199 is comprised of chapter II—Office of the Secretary, DOT (Aviation Proceedings) and chapter III—Commercial Space Transportation, Federal Aviation Administration, DOT. The fifth volume containing part 1200–End is comprised of chapter V—National Aeronautics and Space Administration and chapter VI—Air Transportation System Stabilization. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2015.

For this volume, Michele Bugenhagen was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 14—Aeronautics and Space

(This book contains part 1200 to End)

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PART 1200 [RESERVED]

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AUTHORITY: 51 U.S.C. 20112(h).

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 (51 U.S.C. 20111), as amended (hereafter called the ''Act'').

[55 FR 37222, Sept. 10, 1990, as amended at 79 FR 18444, Apr. 2, 2014]

§ 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.

NASA's basic organization consists of the Headquarters, nine field Centers, the Jet Propulsion Laboratory (a Federally Funded Research and Development Center), and several component installations which report to Center Directors. Responsibility for overall

planning, coordination, and control of NASA programs is vested in NASA Headquarters located in Washington, DC. For additional information, visit *http://www.nasa.gov/about/org_index.html*.

[79 FR 18444, Apr. 2, 2014]

Subpart 3—Boards and Committees

§ 1201.300 Boards and committees.

(a) NASA's Contract Adjustment Board (CAB) and Inventions and Contributions Board (ICB) were established as part of the permanent organization structure of NASA. Charters for both Boards are set forth in part 1209 of this chapter. Procedures for the CAB are set out in 48 CFR part 1850, and procedures for the ICB are set out in 14 CFR parts 1240 and 1245.

(b) The Armed Services Board of Contract Appeals (ASBCA) is a neutral, independent forum whose primary function is to hear and decide post-award contract disputes between government contractors and those entities with whom the ASBCA has entered into agreement to provide services (NASA is one of those entities). The ASBCA functions in accordance with the Contract Disputes Act (41 U.S.C. 7101–7109), its Charter, or other remedy-granting provisions. Information about the ASBCA can be obtained by mail at ASBCA, Skyline 6, Suite 700, 5109 Leesburg Pike, Falls Church, Virginia 22041–3208, by phone at 703–681–8500, or from the Web at *www.asbca.mil*.

[79 FR 18444, Apr. 2, 2014]

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AUTHORITY: E.O. 13526, E.O. 12968, E.O. 13549, E.O. 12829, 32 CFR part 2001, and 51 U.S.C., 20132, 20133.

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

Subpart A—Scope

§ 1203.100 Legal basis.

(a) *Executive Order 13526 (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'' and the Information Security Oversight Office Directive No. 1, as amended (32 CFR part 2001, ''Classified National Security Information'');

(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) The National Aeronautics and Space Act (51 U.S.C. 20113) (Hereafter referred to as, ''The Space Act''), states:

> 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 Space 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; 64 FR 72535, Dec. 28, 1999; 78 FR 5117, Jan. 24, 2013]

§ 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 Procedural Requirements (NPR) 1600.2, NASA Classified National Security Information (CNSI).

[44 FR 34913, June 18, 1979, as amended at 78 FR 5117, Jan. 24, 2013]

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) The Order was promulgated 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. It delegates to NASA 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; 78 FR 5117, Jan. 24, 2013]

§ 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 exchange or sharing of information, techniques, hardware, software, or other technologies.

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

[44 FR 34913, June 18, 1979, as amended at 78 FR 5117, Jan. 24, 2013]

§ 1203.202 Responsibilities.

(a) The Chairperson, NASA Information Security Program Committee (NISPC) (Subpart I of this part), who is the Assistant Administrator for Protective Services, or designee, is responsible for:

(1) Directing the NASA Information Security Program (NISP) 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 NISPC, questions, suggestions, appeals and compliance concerning the NISP and making determinations concerning them.

(4) Coordinating NASA security classification matters with NASA Centers and component facilities and other Government agencies.

(5) Ensuring Security Classification Guides for NASA are developed for NASA programs and projects.

(6) Developing, maintaining and recommending to the Administrator guidelines for the systematic review covering all 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 NISP, 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 NISPC 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 in this section.

(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, NISPC, 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 within a reasonable period.

(d) Other supervisors of NASA 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 redact classified information contained therein.

(e) Chiefs of Protective Services at NASA Centers are responsible for:

(1) Developing proposed Security Classification Guides and submitting the guide to the Office of Protective Services for review and approval.

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

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

(4) Coordinating all security classification actions with the Center's Protective Services Office.

(f) The Director of the Office of Protective Services, NASA Headquarters, who serves as a member and Executive Secretary of the NISPC, is responsible for the NASA-wide coordination of security classification matters.

(g) The Information Security Program Manager, Office of Protective Services (OPS), is responsible for establishing procedures for the safeguarding of classified information or 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; 64 FR 72535, Dec. 28, 1999; 78 FR 5117, Jan. 24, 2013]

§ 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.

(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.

(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; 78 FR 5117, Jan. 24, 2013]

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 Compilation.

A compilation of items that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that meets the standards of classification under the Order; and is not otherwise revealed in the individual items of information. As used in the Order, compilations mean an aggregate of preexisting unclassified items of information.

[78 FR 5118, Jan. 24, 2013]

§ 1203.303 Distribution controls.

NASA shall establish controls over the distribution of classified information to ensure that it is dispersed only to organizations or individuals eligible for access to such information and with a need-to-know the information.

[78 FR 5118, Jan. 24, 2013]

§ 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 and weighed against the detrimental effects on the national security interests which would result from failure to classify.

[44 FR 34913, June 18, 1979, as amended at 78 FR 5118, Jan. 24, 2013]

§ 1203.305 Restricted data.

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

[44 FR 34913, June 18, 1979, as amended at 78 FR 5118, Jan. 24, 2013]

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 some degree of 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, NISPC, 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 §1.4 of ''the Order.''

(a) Military plans, weapons systems, or operations;

(b) Foreign government information;

(c) Intelligence activities (including covert activities), intelligence sources or methods, or cryptology;

(d) Foreign relations or foreign activities of the United States, including confidential sources;

(e) Scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

(h) The development, production, or plans relating to the use of weapons of mass destruction.

[78 FR 5118, Jan. 24, 2013]

§ 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 [Reserved]

§ 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 for a determination.

[44 FR 34913, June 18, 1979, as amended at 78 FR 5118, Jan. 24, 2013]

§ 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. The Office of Protective Services will coordinate with the Information Security Oversight Office (ISOO) Committee and the National Declassification Center to determine what classification guides are current.

[44 FR 34913, June 18, 1979, as amended at 78 FR 5118, Jan. 24, 2013]

§ 1203.407 Duration of classification.

(a) At the time of original classification, the original classification authority shall establish a specific date or event for declassification based on the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. Except for information that should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction, the date or event shall not exceed the timeframe established in paragraph (b) of this section.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it be marked for declassification for up to 25 years from the date of the original decision.

(c) An original classification authority may extend the duration of classification up to 25 years from the date of origin of the document, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this Order are followed.

(d) No information may remain classified indefinitely. Information that is marked for an indefinite duration of classification under predecessor orders, for example, information marked as ''Originating Agency's Determination Required,'' or classified information that contains either incomplete or no declassification instructions, shall have appropriate declassification information applied in accordance with part 3 of this order.

[78 FR 5118, Jan. 24, 2013]

§ 1203.408 Assistance by Information Security Specialist in the Center Protective Services Office.

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

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

(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 Center.

(e) Forwarding all security classification guides to the Office of Protective Services, NASA Headquarters, for final approval.

[44 FR 34913, June 18, 1979, as amended at 78 FR 5118, Jan. 24, 2013]

§ 1203.409 Exceptional cases.

(a) In those cases where a person not authorized to classify information originates or develops information which is believed to require classification, that person must contact the Center's or installation's Information Security Officer in the Protective Services Office to arrange for proper review and safeguarding. Persons other than NASA employees should forward the information to the NASA Central Registry at 300 E Street SW., Washington, DC 20546, Attention: Office of Protective Services.

(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 90 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, for a determination.

[44 FR 34913, June 18, 1979, as amended at 78 FR 5118, Jan. 24, 2013]

§ 1203.410 Limitations.

(a) In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to:

(1) Conceal violations of law, inefficiency, or administrative error;

(2) Prevent embarrassment to a person, organization, or agency;

(3) Restrain competition; or

(4) Prevent or delay the release of information that does not require protection in the interest of the national security.

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

(c) Information may not be reclassified after declassification after being released to the public under proper authority unless: The reclassification is based on a document-by-document review by NASA and a determination that reclassification is required to prevent at least significant damage to the national security and personally approved in writing by the Administrator, the Deputy Administrator, or the Assistant Administrator for Protective Services. All reclassification actions will be coordinated with the Information Security Oversight Office before final approval; the information may be reasonably recovered without bringing undue public attention to the information; the reclassification action is reported promptly to the Assistant to the President for National Security Affairs (the National Security Advisor) and the Director of the Information Security Oversight Office; and for documents in the physical and legal custody of the National Archives and Records Administration (National Archives) that have been available for public use, the Administrator, the Deputy Administrator, or the Assistant Administrator for Protective Services, after making the determinations required by this paragraph, shall notify the Archivist of the United States (hereafter, Archivist), who shall suspend public access pending approval of the reclassification action by the Director of the Information Security Oversight Office. Any such decision by the Director may be appealed by the agency head to the President through the National Security Advisor. Public access shall remain suspended pending a prompt decision on the appeal.

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552), the Presidential Records Act, 44 U.S.C. 2204(c)(1), the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.5 of this Order only if such classification meets the requirements of this Order and is accomplished by document-by-document review with the personal participation or under the direction of the Administrator, the Deputy Administrator, or the Assistant Administrator for Protective Services. The requirements in this paragraph also apply to those situations in which information has been declassified in accordance

with a specific date or event determined by an original classification authority in accordance with section 1.5 of this Order.

(e) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that:

(1) Meets the standards for classification under this Order; and

(2) Is not otherwise revealed in the individual items of information.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983; 78 FR 5119, Jan. 24, 2013]

§ 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. If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires it be marked for declassification for up to 25 years from the date of the original decision.

(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) All security classification guides should be forwarded to the Office of Protective Services for review and final approval. The Office of Protective Services 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 five 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; 78 FR 5119, Jan. 24, 2013]

Subpart E—Derivative Classification

§ 1203.500 Use of derivative classification.

(a) Persons who reproduce, extract, or summarize classified information, or who apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) Be identified by name and position or by personal identifier, in a manner that is immediately apparent for each derivative classification action;

(2) Observe and respect original classification decisions; and

(3) Carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple

sources, the derivative classifier shall carry forward:

(i) The date or event for declassification that corresponds to the longest period of classification among the sources or the marking established pursuant to section 1.6(a)(4)(D) of the Order; and

(ii) A listing of the source materials.

(c) Derivative classifiers shall, whenever practicable, use a classified addendum when classified information constitutes a small portion of an otherwise unclassified document or prepare a product to allow for dissemination at the lowest level of classification possible or in unclassified form.

(d) Persons who apply derivative classification markings shall receive training in the proper application of the derivative classification principles of the Order, with an emphasis on avoiding over-classification, at least once every two years. Derivative classifiers who do not receive such training at least once every two years shall have their authority to apply derivative classification markings suspended until they have received such training. A waiver may be granted by the Administrator, the Deputy Administrator, or the Assistant Administrator for Protective Services if an individual is unable to receive such training due to unavoidable circumstances. Whenever a waiver is granted, the individual shall receive such training as soon as practicable.

[78 FR 5119, Jan. 24, 2013]

§ 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.

Authorized officials with Declassification Authority (DCA) 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.

[44 FR 34913, June 18, 1979, as amended at 78 FR 5120, Jan. 24, 2013]

§ 1203.602 Authorization.

Information shall be declassified or downgraded by an authorized DCA official. 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, NISPC, may also make a decision to declassify or downgrade information.

[78 FR 5120, Jan. 24, 2013]

§ 1203.603 Systematic review for declassification:

(a) *General.* (1) NASA must establish and conduct a program for systematic declassification review of NASA-originated records of permanent historical value exempted from automatic declassification under section 3.3 of this Order. The NASA Office of Protective Services shall prioritize the review of

such records in coordination with the Center Protective Service Offices.

(2) The Archivist shall conduct a systematic declassification review program for classified records:

(i) Accessioned into the National Archives;

(ii) Transferred to the Archivist pursuant to 44 U.S.C. 2203; and

(iii) For which the National Archives serves as the custodian for an agency or organization that has gone out of existence.

(3) The Chairperson, NISPC, shall designate experienced personnel to assist the Archivist in the systematic review of U.S. originated information and foreign information exempted from automated declassification. Such personnel shall:

(i) Provide guidance and assistance to the National Archives and Records Service 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.

(iii) Develop, in coordination with NASA organizational elements, guidelines for the systematic review for declassification of classified information under NASA's jurisdiction. 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 to determine whether continued protection beyond 25 years is needed. These guidelines are authorized for use by the Archivist and the Director of the Information Security Oversight Office, with the approval of the Senior Agency Official, which is the Assistant Administrator, Office of Protective Services, for categories listed in section 3.3 of the Order. These guidelines shall be reviewed at least every five years and revised as necessary, unless an earlier review for revision is requested by the Archivist. Copies of the declassification guidelines promulgated by NASA will be provided to the Information Security Oversight Office, National Archives and Records Administration (NARA). All security classified records exempt from automatic declassification, whether held in storage areas under installation control or in Federal Records Centers, will be surveyed to identify those requiring scheduling for future disposition.

(A) 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 shall be so marked.

(B) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines 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:

(*1*) Identify the information or material involved.

(*2*) Recommend classification beyond 25 years to a specific event scheduled to happen or a specific period of time in accordance with the Order.

(*3*) The Administrator shall delegate to the Senior Agency Official the authority to determine which category shall be kept classified and the dates or event for declassification.

(*4*) Declassification by the Director of the Information Security Oversight Office (DISOO). If the Director 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 ISPC to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(b) [Reserved]

[78 FR 5120, Jan. 24, 2013]

§ 1203.604 Mandatory review for declassification.

(a) *Information covered.* Except as provided in paragraph (b) of this section, all information classified under the Order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) The request for a review describes the document or material containing

the information with sufficient specificity to enable the agency to locate it in a reasonably timely manner;

(2) The document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under 5 U.S.C. 552 in accordance with law; and

(3) The information is not the subject of pending litigation.

(b) *Presidential papers.* Information originated by the President or Vice President; the President's White House Staff, or the Vice President's Staff; committees, commissions, or boards appointed by the President; or other entities within the Executive Office of the President that solely advise and assist the President are exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents and Vice Presidents under the control of the Archivist pursuant to 44 U.S.C. 2107, 2111, 2111 note, or 2203. Procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a decision on the appeal.

(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 Office of Protective Services.

(2) For the most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to the NASA Office of Protective Services only. The requestor may submit the request to: National Aeronautics and Space Administration (NASA), Central Registry, 300 E Street SW., Washington DC 20546, Attention: Office of Protective Services/Information Security Program Manager. The phrase, ''Mandatory Declassification Review,'' must be stated in the request.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act cannot be processed under the MDR process.

(2) The request describes the document or material containing the information with sufficient specificity, such as accession numbers, box titles or numbers, date and title of document, in any combination, to enable NASA to locate it with a reasonable amount of effort, not to exceed 30 days. If more time is required, NASA will notify the requester. After review, the information or any portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

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

(1) The NASA Office of Protective Services review upon receiving the initial request shall be completed within 365 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA Office of Protective Services 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 120 working days after receipt, and the requester shall be advised that the appeal

determination is final. If the requester is dissatisfied with NASA's appeal decision, the requester may initiate an appeal to the Interagency Security Classification Appeals Panel (ISCAP), within the Information Security Oversight Office. If continued classification is required under the provisions of this part 1203, the requester 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 the NASA Office of Protective Services receives any request for declassification of information in documents in its custody that was classified by another Government agency, it shall refer copies of the request and the requested documents to the originating agency for processing and may, after consultation with the originating agency, inform the requester of the referral.

(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 NASA 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 NASA to identify the originating agency and a review of the material indicates that it should be downgraded or declassified, NASA shall be deemed to be the originating agency for the purpose of declassifying or downgrading such material. NASA will consult with the Information Security Oversight Office to assist in final disposition of the information.

(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.

(ii) [Reserved]

[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; 78 FR 5120, Jan. 24, 2013]

EDITORIAL NOTE: At 78 FR 5120, Jan. 24, 2013, § 1203.604 was amended, however, the amendment to revise paragraphs (d)(3) and (4) could not be incorporated due to inaccurate amendatory instruction.

Subpart G [Reserved]

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

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

§ 1203.800 Establishment.

Pursuant to Executive Order 13526, ''Classified National Security Information,'' and The Space Act, in accordance with U.S.C. Title 51, National and Commercial Space Program Sections 20132 and 20133, there is established a NASA Information Security Program Committee (as part of the permanent administrative structure of NASA). The NASA Assistant Administrator for Protective Services, or designee, shall be the Chairperson of the Committee. The Information Security Program Manager, NASA Office of Protective Services, is designated to act as the Committee Executive Secretary.

[78 FR 5121, Jan. 24, 2013]

§ 1203.801 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 Office of Protective Services will provide staff assistance and investigative and support services for the Committee.

[78 FR 5121, Jan. 24, 2013]

§ 1203.802 Membership.

The Committee membership will consist of the Chairperson, the Executive Secretary, and one person nominated by each of the following NASA officials:

(a) The Associate Administrators for:

(1) Aeronautics.

(2) Science Missions Directorate.

(3) Human Explorations and Operations.

(4) International and Interagency Relations.

(b) The Associate Administrator.

(c) The General Counsel.

(d) The Chief Information Officer.

(e) Other members may be designated upon specific request of the Chairperson.

[78 FR 5121, Jan. 24, 2013]

§ 1203.803 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.

[78 FR 5121, Jan. 24, 2013]

§ 1203.804 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.

[78 FR 5121, Jan. 24, 2013]

Subpart I—NASA Information Security Program Committee

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

§ 1203.900 Establishment.

Pursuant to Executive Order 13526, ''Classified National Security Information,'' and The Space Act, in accordance with U.S.C. Title 51, National and Commercial Space Program Sections 20132 and 20133, there is established a NASA Information Security Program Committee (as part of the permanent administrative structure of NASA. The NASA Assistant Administrator for Protective Services, or designee, shall be the Chairperson of the Committee. The Information Security Program Manager, NASA Office of Protective Services, is designated to act as the Committee Executive Secretary.

[78 FR 5122, Jan. 24, 2013]

§ 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 Office of Protective Services, will provide staff assistance, and investigative and support services for the Committee.

[54 FR 6881, Feb. 15, 1989, as amended at 78 FR 5122, Jan. 24, 2013]

§ 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 Administrator for:

(1) Aero-Space Technology.

(2) Space Science.

(3) Space Flight.

(4) External Relations.

(5) Life and Microgravity Sciences and Applications.

(b) Associate Deputy Administrator.

(c) General Counsel.

Other members may be designated upon specific request of the Chairperson.

[54 FR 6881, Feb. 15, 1989, as amended at 64 FR 72535, Dec. 28, 1999]

§ 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.

Subpart J—Special Access Programs (SAP) and Sensitive Compartmented Information (SCI) Programs

SOURCE: 78 FR 5122, Jan. 24, 2013, unless otherwise noted.

§ 1203.1000 General.

A SAP or SCI program shall be created within NASA only upon specific written approval of the Administrator and must be coordinated with the Assistant Administrator for Protective Services, or designee, to ensure required security protocols are implemented and maintained.

§ 1203.1001 Membership.

The Committee membership will consist of the Chairperson, the Executive Secretary, and one person nominated by each of the following NASA officials:

(a) The Associate Administrators for:

(1) Aeronautics.

(2) Science Missions Directorate.

(3) Human Explorations and Operations.

(4) International and Interagency Relations.

(b) The Associate Administrator.

(c) The General Counsel.

(d) The Chief Information Officer.

(e) Other members may be designated upon specific request of the Chairperson.

§ 1203.1002 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.

§ 1203.1003 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: The National Aeronautics and Space Act of 1958, as amended, 51 U.S.C. 20101 *et seq.*

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 Centers and Component Facilities in order to provide appropriate and adequate protection for facilities, property, or classified/proprietary information and material in the possession of NASA or NASA contractors located at NASA Centers and Component Facilities.

(b) This part 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.

[38 FR 8056, Mar. 28, 1973, as amended at 78 FR 5123, Jan. 24, 2013]

§ 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/proprietary information and material in the possession of NASA or a NASA contractor located at a NASA Center or Component Facility, entry to which is subject to security measures, procedures, or controls. Security areas which may be established are:

(1) *Controlled area.* An area in which security measures are taken to safeguard and control access to property and hazardous materials or other sensitive material or to protect operations that are vital to the accomplishment of the mission assigned to a Center or Component Facility. The controlled area shall have a clearly defined perimeter, but permanent physical barriers are not required.

(2) *Limited area.* An area in which security measures are taken to safeguard or control access to classified material or unclassified property warranting special protection or property and hazardous materials or to protect operations that are vital to the accomplishment of the mission assigned to a Center or Component Facility. A Limited Area shall also have a clearly defined perimeter, but differs from a Controlled Area in that permanent physical barriers and access control devices, including walls and doors with locks or access devices, are emplaced to assist the occupants in keeping out unauthorized personnel. All facilities

designated as NASA Critical Infrastructure or a key resource will be designated at a minimum as ''Limited'' areas.

(3) *Exclusion area*. An area that is a permanent facility dedicated solely to the safeguarding and use of Classified National Security Information. It is used when vaults are unsuitable or impractical and where entry to the area alone provides visible or audible access to classified material. To prevent unauthorized access to an exclusion area, visitors will be escorted or other internal restrictions implemented, as determined by the Center Security Office.

(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, 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.

[38 FR 8056, Mar. 28, 1973, as amended at 78 FR 5123, Jan. 24, 2013]

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

(a) *Establishment*.(1) Directors of NASA Centers, including Component Facilities and Technical and Service Support Centers, and the Executive Director for Headquarters Operations at NASA Headquarters may establish, maintain, and protect such areas designated as Controlled, Limited, or Exclusion, depending upon their assessment of the potential for unauthorized persons either to:

(i) Obtain knowledge of classified information,

(ii) Damage or remove property, or to

(iii) Disrupt NASA or NASA contractor operations.

(2) The concurrence of the Assistant Administrator for Protective Services NASA Headquarters, shall be obtained prior to the establishment of a permanent security area.

(3)(i) At a minimum, the following information will be submitted to the Assistant Administrator for Protective Services 15 workdays prior to establishment of each permanent security area:

(*a*) The name and specific location of the NASA Center or Component 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 Center or Component Facility.

(*c*) Designation desired: *i.e.*, controlled, limited, or Exclusion.

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

(ii) For those areas currently designated by the Center as ''permanent security areas,'' the information set forth in paragraph (d)(3)(i) of this section will be furnished to the Assistant Administrator for Protective Services , 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. At 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 Assistant Administrator for Protective Services, 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 Center or Component Facility.

(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 Assistant Administrator for Protective Services will be informed of permanent security area revocations within 15 workdays.

[38 FR 8056, Mar. 28, 1973, as amended at 78 FR 5124, Jan. 24, 2013]

§ 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) *Controlled 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 held, discussed, or disseminated on site or is the holder of a positive 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) *Exclusion area.* Possess a security clearance equal to the classified information or material involved.

(b) The Center Directors, including Component Facilities and Technical and Service Support Centers, and the Executive Director for Headquarters Operations, NASA Headquarters, may rescind previously granted authorizations to enter a security area when an individual's access is no longer required, threatens the security of the property, or is disruptive of Government operations.

[38 FR 8056, Mar. 28, 1973, as amended at 78 FR 5124, Jan. 24, 2013]

§ 1203a.104 Violation of security areas.

(a) *Removal of unauthorized persons.* The Center Directors, including Component Facilities and Technical and Service Support Centers, and the Executive Director for Headquarters, NASA Headquarters 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 controlled, limited, or exclusion 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.

[38 FR 8056, Mar. 28, 1973, as amended at 78 FR 5124, Jan. 24, 2013]

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

If a Director of a NASA Centers and Component Facilities, 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 Assistant Administrator for Protective Services, NASA Headquarters, in accordance with NASA Policy Directive 1400.2, Publishing NASA Documents in the FEDERAL REGISTER and Responding to Regulatory Actions for processing.

[38 FR 8056, Mar. 28, 1973, as amended at 78 FR 5124, Jan. 24, 2013]

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: The National and Commercial Space Program (51 U.S.C.). Sections 20132 and 20133 *et seq.*

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

§ 1203b.100 Purpose.

This regulation implements 51 U.S.C. National and Commercial Space Programs, sections 20133 and 20134, by establishing guidelines for the exercise of

arrest authority and for the exercise of physical force, including deadly force, in conjunction with such authority.

[57 FR 4926, Feb. 11, 1992, as amended at 78 FR 5124, Jan. 24, 2013]

§ 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 51 U.S.C. 20134 and this regulation.

[57 FR 4926, Feb. 11, 1992, as amended at 78 FR 5124, Jan. 24, 2013]

§ 1203b.102 Definitions.

Accredited Course of Training. A course of instruction offered by the NASA Protective Services Training Academy, 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 concerning 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 levels.

[57 FR 4926, Feb. 11, 1992, as amended at 78 FR 5125, Jan. 24, 2013]

§ 1203b.103 Arrest authority.

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

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

(2) They have been certified in writing by the Assistant Administrator for Protective Services, 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 an offense against the United States Government, NASA, or a NASA contractor; 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 Center Chief Counsel's Office, as appropriate, shall provide guidance as to the applicability of these regulations.

[57 FR 4926, Feb. 11, 1992, as amended at 78 FR 5125, Jan. 24, 2013]

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

(a) In making an arrest, the security force personnel should announce their authority and that the person is under arrest prior to taking the person into custody. If the circumstances are such that making such an announcement would be useless or dangerous to the security force personnel or others, the security force personnel may dispense with these announcements, but must subsequently identify themselves and their arrest authority to the arrested person(s) as soon as reasonably possible.

(b) The security force personnel 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) 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 the person is brought before a magistrate without unnecessary delay.

[57 FR 4926, Feb. 11, 1992, as amended at 78 FR 5125, Jan. 24, 2013]

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

When a security force personnel 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.

[57 FR 4926, Feb. 11, 1992, as amended at 78 FR 5125, Jan. 24, 2013]

§ 1203b.106 Use of deadly force.

NASA security force personnel may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

(a) Deadly force may not be used solely to prevent the escape of a fleeing suspect.

(b) Firearms may not be fired solely to disable moving vehicles.

(c) If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.

(d) Warning shots are not permitted outside of the prison context.

(e) Officers will be trained in alternative methods and tactics for handling resisting subjects which must be used when the use of deadly force is not authorized by this policy.

[78 FR 5125, Jan. 24, 2013]

§ 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 or desist 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 personnel discharges a weapon while in a duty status:

(1) The incident shall be reported to the Center Chief of Security who, in turn, will report it to the NASA Assistant Administrator for Protective Services 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 Center Director or the Assistant Administrator for Protective Services deems appropriate, pending investigation of the incident.

(3) The cognizant Center Director, or for incidents occurring at NASA Headquarters, the Executive Director for Headquarters Operations, 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 Assistant Administrator for Protective Services.

(4) Upon conclusion of the investigation, the Center Director or the Assistant Administrator for Protective Services, 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; 78 FR 5125, Jan. 24, 2013]

§ 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 NASA Headquarters and NASA Centers.

(c) The Assistant Administrator for Protective Services, 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 requisite knowledge and skill in the use of unarmed defense techniques and their assigned firearms.

(d) The Associate Assistant Administrator for Protective Services, or designee, will also:

(1) Ensure periodic refresher training to maintain continued proficiency and current knowledge of unarmed defense techniques;

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

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

(e) The Executive Director for Headquarters Operations, and Center Directors shall issue local policies and procedural requirements, subject to prior NASA Headquarters approval, which will supplement this regulation for NASA Headquarters or NASA Center-specific concerns.

[57 FR 4926, Feb. 11, 1992, as amended at 58 FR 5263, Jan. 21, 1993; 78 FR 5125, Jan. 24, 2013]

§ 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, 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.

[57 FR 4926, Feb. 11, 1992, as amended at 58 FR 5263, Jan. 21, 1993; 78 FR 5125, Jan. 24, 2013]

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 policy.

Subpart 5—Delegations and Designations

1204.500 Scope of subpart.
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 Education.
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 at NASA Installations or on NASA Property; Trespass or Unauthorized Introduction of Weapons or Dangerous Materials

1204.1000 Scope of subpart.
1204.1001 Policy.
1204.1002 Responsibility.
1204.1003 Procedures.
1204.1004 Trespass.
1204.1005 Unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.
1204.1006 Violations.

Subpart 11—Enforcing Traffic Laws at NASA Centers and Component Facilities

Sec.
1204.1100 Scope of subpart.
1204.1101 Policy.
1204.1102 Responsibilities.
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Subparts 12–13 [Reserved]

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

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1204.1403 Available airport facilities.
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1204.1503 Programs and activities subject to these regulations.
1204.1504 [Reserved]
1204.1505 Federal interagency coordination.
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1204.1509 Receiving and responding to comments.
1204.1510 Efforts to accommodate intergovernmental concerns.
1204.1511 Coordination in interstate situations.
1204.1512 [Reserved]
1204.1513 Waivers of provisions of these regulations.

Subpart 16—Temporary Duty Travel—Issuance of Motor Vehicle for Home-to-Work Transportation

1204.1600 Issuance of motor vehicle for home-to-work.

APPENDIX A TO PART 1204—ITEMS TO COVER IN MEMORANDA 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 NASA's policy to enable small businesses (including small disadvantaged businesses, small women-owned businesses, HUBZone small businesses, veteran-owned small businesses and service disabled veteran-owned small businesses), historically black colleges and universities, and other minority educational institutions the opportunity to participate equitably and proportionately in its total purchases and contracts that are consistent with the Agency's needs to execute its mission.

(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 (R&D) 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 inR&D, work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

[58 FR 43554, Aug. 17, 1993, as amended at 78 FR 77353, Dec. 23, 2013]

§ 1204.402 Responsibilities.

(a) *Office of Small Business Programs (OSBP).* The Associate Administrator for Small Business Programs, NASA Headquarters, is responsible for the activities described in NASA Policy Directive 1000.3, The NASA Organization. The Associate Administrator is also responsible for representing NASA before other Government agencies on matters primarily affecting small businesses.

(b) *NASA Headquarters and NASA Centers.* Center Directors (including the Executive Director for the NASA Shared Services Center and the Director for the NASA Management Office, but excluding the Director for the Jet Propulsion Laboratory) along with the Associate Administrator for the Office of Small Business Programs shall nominate a qualified individual in their contracting office as a small business specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in NASA acquisitions. When a Center Director determines that the volume of acquisitions or the functions relating to acquisitions at the Center do not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis, with the concurrence of the Associate Administrator for the Office of Small Business Programs. NASA Centers shall establish and maintain liaison with the Small Business Administration (SBA) Procurement Center Representative (PCR) or the appropriate SBA Regional Office in matters relating to NASA Center procurement activities. Small Business Specialists shall perform the duties delineated in NASA FAR Supplement 1819.201(e)(ii). The Associate Administrator for Small Business Programs shall assign a Small Business Technical Advisor to each contracting activity within the Agency to which the SBA has assigned a PCR, pursuant to FAR 19.201(d)(8).

[78 FR 77353, Dec. 23, 2013]

§ 1204.403 General policy.

NASA's general policy for small business programs is described in 48 CFR part 1819, Small Business Programs; 48 CFR part 1852, Solicitation Provisions and Contract; and NASA Policy Directive 5000.2C, Small Business Subcontracting Goals (*http://nodis3.gsfc.nasa.gov/displayDir.cfm?t=NPD&c=5000&s=2*).

[78 FR 77353, Dec. 23, 2013]

Subpart 5—Delegations and Designations

AUTHORITY: 51 U.S.C. 20113.

§ 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 Assistant Administrator for Strategic Infrastructure and the Director, Integrated Asset Management 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; 79 FR 11319, Feb. 28, 2014]

§ 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 Assistant Administrator for Strategic Infrastructure and the Director, Integrated Asset Management 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) NASA Center Directors 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) NASA Center Directors may redelegate this authority to only two senior management officials of the appropriate Center.

(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 Center Director 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 Assistant Administrator for Strategic Infrastructure, the Director, Integrated Asset Management Division, or the appropriate Center Director 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 Assistant Administrator for Strategic Infrastructure, the Director, Integrated Asset Management Division, or the appropriate Center Director, 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 Center Director 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 Assistant Administrator for Strategic Infrastructure or the Director, Integrated Asset Management Division.

(h) *Services of the Corps of Engineers*. In exercising the authority herein granted, the Center Directors, 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, Office of Strategic Infrastructure, Integrated Asset Management Division, Washington, DC 20546.

[51 FR 26860, July 28, 1986, as amended at 56 FR 57592, Nov. 13, 1991; 79 FR 11319, Feb. 28, 2014]

§ 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 Assistant Administrator for Strategic Infrastructure and the Director, Facilities Engineering and Real Property 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) Center Directors 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 proposed for use by a NASA exchange and subject to the provisions of NASA Policy Directive 9050.6, NASA Exchange and Morale Support Activities.

(2) Center Directors may redelegate this authority to only two senior management officials of the NASA Center 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 Center Director 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 Assistant Administrator for Strategic Infrastructure, the Director, Integrated Asset Management Division, or the Center Director 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 Assistant Administrator for Strategic Infrastructure, the Director, Integrated Asset Management Division, or the Center Director 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 Center Director 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 Strategic Infrastructure or the Director, Integrated Asset Management Division.

(g) *Services of the Corps of Engineers*. In exercising the authority herein granted, NASA Center Directors, 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 Administration, Office of Strategic Infrastructure, Washington, DC 20546.

[51 FR 27528, Aug. 1, 1986, as amended at 56 FR 57592, Nov. 13, 1991; 79 FR 11319, Feb. 28, 2014]

§ 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 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; 79 FR 11320, Feb. 28, 2014]

§§ 1204.506–1204.507 [Reserved]

§ 1204.508 Delegation of authority of certain civil rights functions to Department of Education.

It is the National Aeronautics and Space Administration's (NASA) policy to comply with the Civil Rights Act of 1964 (Pub. L. 88–352) that prohibits discrimination in a host of areas, including employment and Federally-assisted programs and activities. To implement the provisions of this Act, NASA promulgated the following internal policies and requirements, and entered into a memorandum of understanding (MOU) with the Department of Education to ensure compliance:

(a) NASA Policy Directive (NPD) 2081.1, Nondiscrimination in Federally Assisted and Conducted Programs of NASA, describes the Agency's policy to ensure nondiscrimination in Federally-assisted and conducted programs of NASA, nondiscrimination in Federally-conducted education and training programs, and access for individuals with disabilities to Federal electronic and information technology. NPD 2081.1 is accessible at *http://nodis3.gsfc.nasa.gov/;*

(b) NASA Procedural Requirements (NPR) 2081.1, Nondiscrimination in Federally Assisted and Conducted Programs, describes the requirements for processing complaints of discrimination, conducting civil rights compliance reviews, and internal functional equal opportunity reviews. NPR 2081.1 is accessible at *http://nodis3.gsfc.nasa.gov/;* and

(c) Memorandum of Understanding between NASA and the Department of Education delegates both the agencies as responsible for specific civil rights compliance duties with respect to elementary and secondary schools, and institutions of higher education. The MOU can be accessed at *http://odeo.hq.nasa.gov/documents/DOEd-NASA_MOU.pdf.*

[78 FR 76058, Dec. 16, 2013]

§ 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 Assistant Administrator, Office of Strategic Infrastructure, 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 Contract 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, as amended at 79 FR 11320, Feb. 28, 2014]

Subparts 6–9 [Reserved]

Subpart 10—Inspection of Persons and Personal Effects at NASA Installations or on NASA Property; Trespass or Unauthorized Introduction of Weapons or Dangerous Materials

AUTHORITY: The National and Commercial Space Program (51 U.S.C.). Sections 20132 and 20133 *et seq.*

SOURCE: 65 FR 47663, Aug. 3, 2000, unless otherwise noted.

§ 1204.1000 Scope of subpart.

This subpart establishes NASA policy and prescribes baseline, procedures concerning the inspection of persons and property in their possession while entering, or on, or exiting NASA real property or facilities (including NASA

Headquarters, NASA Centers, or Component Facilities). In addition, it proscribes unauthorized entry or the unauthorized introduction of weapons or other dangerous instruments or materials at any NASA facility.

[65 FR 47663, Aug. 3, 2000, as amended at 78 FR 5125, Jan. 24, 2013]

§ 1204.1001 Policy.

(a) In the interest of national security, NASA will provide appropriate and adequate protection or security for personnel, property, facilities (including NASA Headquarters, NASA Centers, and Component Facilities), 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, continued presence on, or exiting any NASA facility.

(b) This policy is intended to comply with the heightened security measures for facilities owned or occupied by Federal agencies (in this case NASA), to mitigate threats to such facilities and to better protect the persons and property thereon.

[65 FR 47663, Aug. 3, 2000, as amended at 78 FR 5126, Jan. 24, 2013]

§ 1204.1002 Responsibility.

The NASA Center Directors and the Executive Director for Headquarters Operations are responsible for implementing the provisions of this subpart. In implementing this subpart, these officials will coordinate their action with appropriate officials of other affected agencies.

[65 FR 47663, Aug. 3, 2000, as amended at 78 FR 5126, Jan. 24, 2013]

§ 1204.1003 Procedures.

(a) All entrances to NASA real property or facilities (including NASA Headquarters, NASA Centers, or Component Facilities) will be conspicuously posted with the following notices:

(1) CONSENT TO INSPECTION: YOUR ENTRY INTO, CONTINUED PRESENCE ON, OR EXIT FROM THIS FACILITY IS CONTINGENT UPON YOUR CONSENT TO INSPECTION OF PERSON AND PROPERTY.

(2) UNAUTHORIZED INTRODUCTION OF WEAPONS OR DANGEROUS MATERIALS IS PROHIBITED UNLESS SPECIFICALLY AUTHORIZED BY NASA. YOU MAY NOT CARRY, TRANSPORT, INTRODUCE, STORE, OR USE FIREARMS OR OTHER DANGEROUS WEAPONS, EXPLOSIVES OR OTHER INCENDIARY DEVICES, OR OTHER DANGEROUS INSTRUMENT OR MATERIAL LIKELY TO PRODUCE SUBSTANTIAL INJURY OR DAMAGE TO PERSONS OR PROPERTY UNLESS AUTHORIZED BY NASA.

(b) Only NASA security personnel or members of the facility's uniformed security force will conduct inspections pursuant to this subpart. Such inspections will be conducted in accordance with guidelines established by the Assistant Administrator for Protective Services , NASA Headquarters.

(c) If an individual does not consent to an inspection, it will not be conducted, but the individual will be denied entry to, or be escorted off the facililty.

(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 facility, the individual will be denied entry to or be escorted off the facility, 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 pending proper authorization for the possession of the property or its removal from the facility. The individual relinquishing the property will be provided with a receipt for the property.

[65 FR 47663, Aug. 3, 2000, as amended at 78 FR 5126, Jan. 24, 2013]

§ 1204.1004 Trespass.

Unauthorized entry upon any NASA real property or facility is prohibited.

[65 FR 47663, Aug. 3, 2000, as amended at 78 FR 5126, Jan. 24, 2013]

§ 1204.1005 Unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.

(a) Refer to the notice in § 1204.1003, paragraph (a)(2), for a description of the consequences for unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.

(b) § 1204.1003, paragraph (a)(2) shall not apply to:

(1) The lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, or NASA contractor, who is authorized to carry firearms or other material covered by paragraph (a) of this section.

(2) The lawful carrying of firearms or other dangerous weapons at or on a NASA facility after written prior approval has been obtained from the facility Security Office in connection with sanctioned hunting, range practice, or other lawful purpose.

[65 FR 47663, Aug. 3, 2000, as amended at 78 FR 5126, Jan. 24, 2013]

§ 1204.1006 Violations.

Anyone violating these regulations may be cited for violating Title 18 of the United States Code (U.S.C.) Section 799, which states that whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration [NASA], or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined under this title [Title 18], or imprisoned not more than one year, or both.

[65 FR 47663, Aug. 3, 2000, as amended at 78 FR 5126, Jan. 24, 2013]

Subpart 11—Enforcing Traffic Laws at NASA Centers and Component Facilities

AUTHORITY: The National and Commercial Space Program 51 U.S.C. 20132 and 20133 et seq; 5 U.S.C. 301, and 18 U.S.C. 799 (2014).

SOURCE: 79 FR 54903, Sept. 15, 2014, unless otherwise noted.

§ 1204.1100 Scope of subpart.

This subpart establishes policies pursuant to the requirements of National and Commercial Space Programs (51 U.S.C. 20132) authorizing the NASA Administrator to establish such security requirements, restrictions and safeguards as he deems necessary in the interest of national security, under 5 U.S.C. 301, ''Housekeeping statute,'' and 18 U.S.C. 799, making it criminal to violate published NASA regulations. The provisions of this subpart apply to all NASA installations, including NASA Headquarters, NASA Centers, and component facilities. NASA installations refers to all NASA-owned, controlled, or leased property, with exclusive or concurrent Federal jurisdiction, including non-contiguous or unfenced areas and including areas otherwise open to the public at large. These provisions are also applicable to all persons who operate or control a motor vehicle, or otherwise use the streets of a NASA installation, over which the United States exercises exclusive or concurrent legislative jurisdiction.

§ 1204.1101 Policy.

(a) It is NASA policy that an effective, standardized, and comprehensive traffic safety program be established and maintained at all NASA Centers, and component facilities, as prescribed in NASA Procedural Requirement (NPR) 8715.C, NASA General Safety Program Requirements. A traffic safety program is essential for the protection and security of NASA laboratories, stations, base, or other facilities, and for the protection of any of its aircraft, missiles, spacecraft, or similar vehicles, or part thereof, and/or of any property or equipment in the custody of any contractor, subcontractor, or the Administration.

(b) To ensure a safe and secure workplace and to provide better for preservation of life and property, all persons on a NASA Center or component facility shall comply with the vehicular and pedestrian traffic requirements of the installation per this Subpart, and the laws of the state in which the installation is located.

(c) *Vehicular and pedestrian traffic.* (1) Drivers of all vehicles in or on NASA-owned, controlled or leased property shall be in possession of a current and valid state or territory issued driver's license and vehicle registration, and the vehicle shall display all current and valid tags and licenses required by the jurisdiction in which it is registered.

(2) Drivers who have had their privilege or license to drive suspended or revoked by any state or territory shall not drive any vehicle in or on property during such period of suspension or revocation.

(3) Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security force personnel, other authorized individuals, and all posted traffic signs, including speed limits.

(4) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited.

(5) Parking without authority, parking in unauthorized locations or in locations reserved for other persons, parking continuously in excess of 18 hours without permission, or contrary to the direction of posted signs is prohibited. This section may be supplemented by the Center Director or installation officer in charge from time to time by the issuance and posting of specific traffic directives. When so issued and posted, such directives shall have the same force and effect as if made a part hereof.

(d) Center Directors are hereby delegated authority to determine if their respective Centers require the authority and ability to issue traffic and parking citations, which if implemented, must be in accordance with this Subpart. Should no traffic and parking citation authority and ability be necessary, the Center Director concerned will make a report of same to the Administrator via Associate Administrator for Protective Services. Prior to the effective date of Centers implementing, Centers and Headquarters Operations should transmit their proposed regulations to NASA Office of Protective Services for review and concurrence.

(e) Consistent with arrangements with Federal authorities as each Center and Headquarters may make, violators of such regulations may be issued a District Court Violation Notices for offenses by security officers, including contractor guards. In accordance with this regulation, Centers are authorized to make liaison and such arrangements for appropriate enforcement programs with the cognizant Office(s) of the United States Attorney. Additional information on processing violation notices and liaison necessary is available at: *http://www.cvb.uscourts.gov/*.

(f) A copy of this subpart shall be posted in an appropriate place at each NASA Center or component facility.

§ 1204.1102 Responsibilities.

(a) The Center Directors of NASA installations and the Executive Director for Headquarters Operations over which the United States has exclusive or concurrent legislative jurisdiction, and consistent with the foregoing, are delegated the authority to establish additional vehicular and pedestrian traffic rules and regulations for their installations.

(b) All persons on a NASA Center or component facility are responsible for compliance with locally established vehicular and pedestrian traffic rules and regulations.

§ 1204.1103 Procedures.

The Center Directors and the Executive Director for Headquarters Operations shall issue local policies and procedural requirements, subject to prior NASA Office of Protective Services approval, which will implement this regulation for their respective NASA Centers and component facilities.

§ 1204.1104 Violations.

A person found in violation, on a NASA installation, of any vehicular or

pedestrian traffic law, or local installation vehicular or pedestrian traffic rule or regulation made applicable to the installation under the provisions of this subpart, is subject to punishment as provided for by 18 U.S.C. 799 (violation of regulations of NASA).

Subparts 12–13 [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.

§ 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.

Subpart 16—Temporary Duty Travel—Issuance of Motor Vehicle for Home-to-Work Transportation

AUTHORITY: 31 U.S.C. 1344 note, 40 U.S.C. 486(c).

§ 1204.1600 Issuance of motor vehicle for home-to-work.

When a NASA employee on temporary duty travel is authorized to travel by Government motor vehicle and the official authorizing the travel determines that there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day and taken to the employee's residence prior to the commencement of official travel. Similarly, when a NASA employee is scheduled to return from temporary duty travel after the close of working hours and the official authorizing the travel determines that there will be a significant savings in time, the motor vehicle may be taken to the employee's

residence and returned the next regular working day.

[68 FR 60847, Oct. 24, 2003]

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—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

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Subpart I—Location for Inspection and Request of Agency Records

1206.900 FOIA offices and electronic libraries.

AUTHORITY: 5 U.S.C. 552, 552a; 51 U.S.C. 20113(a)

SOURCE: 79 FR 46678, Aug. 11, 2014, unless otherwise noted.

Subpart A—Basic Policy

§ 1206.100 Scope of part.

This part 1206 establishes the policies, responsibilities, and procedures for the release of Agency records which are under the jurisdiction of the National Aeronautics and Space Administration, hereinafter NASA, to members of the public. This part applies to information and Agency records located at NASA Headquarters, and NASA Centers, including Component Facilities and Technical and Service Support Centers, herein NASA Headquarters and Centers, as defined in this part.

§ 1206.101 General policy.

(a) In compliance with the Freedom of Information Act (FOIA), as amended 5 U.S.C. 552, a positive and continuing obligation exists for NASA, herein Agency, to make available to the fullest extent practicable upon request by members of the public, all Agency records under its jurisdiction, as described in this regulation.

(b) Part 1206 does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

Subpart B—Types of Records To Be Made Available

§ 1206.200 Publishing of records.

(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 NASA Centers 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 regarding 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 in accordance with the FOIA, 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;

(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;

(iv) Copies of all records, regardless of form or format, that have been released to any person under Subpart C

herein and which, because of the nature of their subject matter, the Agency determines have become or are likely to become the subject of subsequent requests for substantially the same records (frequently requested documents).

(2) *A general index of records referred to under paragraph (b)(1)(iv) of this section.*

(i) For records created after November 1, 1997, which are covered by paragraph (b)(l)(i) through (b)(l)(iv) of this section, such records shall be available electronically, through an electronic library and in electronic forms or formats.

(ii) 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. The extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by an exemption in the FOIA. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion is made.

(c) *Other Agency records.* (1) 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, or unless they may be purchased by the public from other readily available sources, i.e., books.

(2) Furthermore, at a minimum, NASA will maintain records in its electronic library that were created after November 1, 1997, under paragraphs (b)(1)(iv) and a guide for requesting records or information from NASA.

§ 1206.201 Proactive disclosure of Agency records.

Records that are required by the FOIA to be made available for public inspection and copying are accessible on the Agency's Web site, *http://www.nasa.gov*. Each Center is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting such records. Each Center has a FOIA Public Liaison who can assist individuals in locating records particular to a Center. A list of the Agency's FOIA Public Liaisons is available at *http://www.hq.nasa.gov/office/pao/FOIA/agency/*.

§ 1206.202 Records that have been published.

Publication in the FEDERAL REGISTER is a means of making certain Agency records are available to the public in accordance with 5 U.S.C.552(a)(2) without requiring the filing of a FOIA request. NASA has a FOIA Electronic Library Web site at NASA Headquarters and each of its Centers. The FedBizOpps (FBO) (formerly Commerce Business Daily), is also 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 and the Earth Resources Observation and Science Center (Department of the Interior). Such publications and documents are not required to be made available or reproduced in response to a request unless they cannot be purchased readily from available sources.

§ 1206.203 Incorporation by reference.

Records 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).

Subpart C—Procedures

§ 1206.300 How to make a request for Agency records.

(a) A requester submitting a request for records must include his/her name and mailing address, a description of the record(s) sought (see § 1206.301), and must address fees or provide justification for a fee waiver (see § 1206.302) as

well as address the fee category in accordance with § 1206.507. It is also helpful to provide a telephone number and email address in case the FOIA office needs to contact you regarding your request; however, this information is optional when submitting a written request. If a requester chooses to submit a request online via the NASA FOIA Web site, the required information must be completed. Do not include a social security number on any correspondence with the FOIA office.

(b) NASA does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, Agency records are decentralized and maintained by various Centers and offices throughout the country.

(c) NASA has not yet implemented a records management application for automated capture and control of e-records; therefore, official files are primarily paper files.

(d) A member of the public may request an Agency record by mail, facsimile (FAX), electronic-mail (email), or by submitting a written request in person to the FOIA office having responsibility over the record requested or to the NASA Headquarters (HQ) FOIA Office.

(e) When a requester is unable to determine the proper NASA FOIA Office to direct a request to, the requester may send the request to the NASA HQ FOIA Office, 300 E. Street SW., Washington, DC 20546–0001. The HQ FOIA Office will forward the request to the Center(s) that it determines to be most likely to maintain the records that are sought.

(1) It is in the interest of the requester to send the request to the Center FOIA Office they believe has responsibility over the records being sought. (See Appendix A for *www.nasa.gov/foia* for NASA FOIA Office locations and addresses.)

(2) A misdirected request may take up to ten (10) additional working (meaning all days except Saturdays, Sundays and all Federal legal holidays) days to reroute to the proper FOIA office.

(f) A requester who is making a request for records about himself or herself (a Privacy Act request) must comply with the verification of identity provisions set forth in 14 CFR 1212.202.

(g) Where a request pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by the individual who is the subject of the record requested, or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or submit proof that the individual is deceased (e.g., a copy of a death certificate or a verifiable obituary).

(h) As an exercise of its administrative discretion, each Center FOIA office may require a requester to supply additional information if necessary, i.e., a notarized statement from the subject of the file, in order to verify that a particular individual has consented to a third party disclosure. Information will only be released on a case-by-case basis to third party requesters if they have independently provided authorization from the individual who is the subject of the request.

§ 1206.301 Describing records sought.

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, a request must meet the following requirements:

(a) The request must be addressed to an appropriate FOIA office or otherwise be clearly identified in the letter as a request for an Agency record under the ''Freedom of Information Act.''

(b) Requesters must describe the records sought in sufficient detail to enable Agency personnel who are familiar with the subject area of the request to identify and locate the record with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist a FOIA office in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. In general, requesters should include as

much detail as possible about the specific records or the types of records sought.

(c) If the requester fails to reasonably describe the records sought, the FOIA office shall inform the requester of what additional information is needed or why the request is deficient. The FOIA office will also notify the requester that it will not be able to comply with the FOIA request unless the additional information requested is provided within 20 working days from the date of the letter. If the additional information is not provided within that timeframe, the request will be closed without further notification.

(d) If after being asked to clarify a request, the requester provides additional information to the FOIA office but fails to provide sufficient details or information to allow the FOIA office to ascertain exactly what records are being requested and locate them, or in general to process the request, the FOIA office will notify the requester that the request has not been properly made and the request will be closed. The FOIA office will advise him/her that they may submit a new request for the information; however, the requester will need to provide more detailed information to allow processing of the request.

(e) NASA need not comply with a blanket or categorical request (such as ''all matters relating to'' a general subject) where it is not reasonably feasible to determine what record is sought.

(f) NASA will in good faith attempt to identify and locate the record(s) sought and will consult with the requester when necessary and appropriate for that purpose in accordance with these regulations.

(g) NASA is not required to create or compile records in response to a FOIA request.

§ 1206.302 Fee agreements.

(a) A request must explicitly state a willingness to pay all fees associated with processing the request, fees up to a specified amount, or a request for a fee waiver, if processing fees will likely exceed the statutory entitlements as defined in § 1206.507(b) and (c).

(b) If the FOIA office determines that fees for processing the request will exceed the agreed upon amount or the statutory entitlements, the FOIA office will notify the requester that:

(1) He/she must provide assurance of payment for all anticipated fees or provide an advance payment if estimated fees are expected to exceed $250.00, or

(2) The FOIA office will not be able to fully comply with the FOIA request unless an assurance or advance payment as requested has been provided.

(3) He/she may wish to limit the scope of the request to reduce the processing fees.

(c) If the FOIA office does not receive a written response within 20 working days after requesting the information, it will presume the requester is no longer interested in the records requested and will close the file on the request without further notification.

(d) A commercial-use requester (as defined in§ 1206.507(c)(1)) must:

(1) State a willingness to pay all fess associated with processing a request; or

(2) State a willingness to pay fees to cover the costs of conducting an initial search for responsive records to determine a fee estimate.

(e) If a requester is only willing to pay a limited amount for processing a request and it is for more than one document, the requester must state the order in which he/she would like the request for records to be processed.

(f) If a requester is seeking a fee waiver, the request must include sufficient justification to substantiate a waiver. (See subpart E of this part for information on fee waivers.) Failure to provide sufficient justification will result in a denial of the fee waiver request.

(g) If a requester is seeking a fee waiver, he/she may also choose to state a willingness to pay fees in case the fee waiver request is denied in order to allow the FOIA office to begin processing the request while considering the fee waiver.

(h) If a fee is chargeable for search, review, duplication, or other costs incurred in connection with a request for an Agency record, the requester will be billed prior to releasing Agency documents. If the total amount of processing fees is under $50.00, the Agency

will release the records when final processing is complete.

(1) If the exact 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 fees chargeable.

(2) For circumstances in which advance payment of fees is required, the requester will be notified after the FOIA office has obtained an estimate of associated fees.

(i) The FOIA office will begin processing a request only after the request has been properly described in accordance with these regulations and fees have been resolved.

(j) If the requester is required to pay a fee and it is later determined on appeal that he/she was entitled to a full or partial fee waiver, a refund will be sent as appropriate.

(k) NASA may refuse to consider a waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain owed to the Agency for another information access request.

§ 1206.303 Format of records disclosed.

(a) The FOIA office will provide the records in the requested format if the records can readily be reproduced from the original file to that specific format.

(b) The FOIA office may charge direct costs associated with converting the records or files into the requested format if they are not maintained in that format. If the costs to convert the records exceed the amount the requester has agreed to pay, the FOIA office will notify the requester in writing. If the requester does not agree to pay the additional fees for converting the records, the records may not be provided in the requested format.

§ 1206.304 Expedited processing.

A requester may ask for expedited processing of a request. However, information to substantiate the request must be included in accordance with § 1206.400, Criteria for Expedited Processing; otherwise, the request for expedited processing will be denied and processed in the simple or complex queue.

§ 1206.305 Responding to requests.

(a) Except in the instances described in paragraphs (e) and (f) of this section, the FOIA office that first receives a request for a record and maintains that record is the FOIA office responsible for responding to the request.

(b) In determining what records are responsive to a request, a FOIA office ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the FOIA office shall inform the requester of that date.

(c) A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c)(1)–(3), shall not be considered responsive to a request.

(d) The Head of a Center, or designee, is authorized to grant or to deny any requests for records that are maintained by that Center.

(e) The FOIA office may refer a request to or consult with another Center FOIA office or Federal agency in accordance with § 1206.308, if the FOIA office receives a request for records that are in its possession that were not created at that Center. If another Center within NASA or another Federal agency has substantial interest in or created the records, the request will either be referred or they will consult with that FOIA office/agency.

(f) If a request for an Agency record is received by a FOIA office not having responsibility of the record (for example, when a request is submitted to one NASA Center or Headquarters and another NASA Center has responsibility of the record), the FOIA office receiving the request shall promptly forward it to that FOIA office within 10 working days from the date of receipt. The receiving FOIA office shall acknowledge the request and provide the requester with a tracking number.

§ 1206.306 Granting a request.

(a) The FOIA office will not begin processing a request until all issues regarding scope and fees have been resolved.

(b) If fees are not expected to exceed the minimum threshold of $50.00, and

the scope of the request is in accordance with § 1206.301, the FOIA office will begin processing the request.

(c) If the FOIA office contacts the requester regarding fees or clarification and the requester has provided a response, the FOIA office will notify the requester in writing of the decision to either grant or deny the request.

§ 1206.307 Denying a request.

(a) If the FOIA office denies records in response to a request either in full or in part, it will advise the requester in writing that:

(1) The requested record(s) is exempt in full or in part; or

(2) Records do not exist, cannot be located, or are not in the Agency's possession; or

(3) A record is not readily reproducible in the form or format requested; or

(4) Denial is based on a procedural issue only and not access to the underlying records when it makes a decision that:

(i) A fee waiver or another fee-related issue will not be granted; or

(ii) Expedited processing will not be provided.

(b) The denial notification must include:

(1) The name, title, or position of the person(s) responsible for the denial;

(2) A brief statement of the reasons for the denial, including a reference to any FOIA exemption(s) applied by the FOIA office to withhold records in full or in part;

(3) An estimate of the volume of any records or information withheld, i.e., the number of pages or a reasonable form of estimation, unless such an estimate would harm an interest protected by the exemption(s) used to withhold the records or information;

(4) A statement that the denial may be appealed under Subpart G of this part and a description of the requirements set forth therein.

(c) If the requested records contain both exempt and non-exempt material, the FOIA office will:

(1) Segregate and release the non-exempt material unless the non-exempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(2) Indicate on the released portion(s) of the records the amount of information redacted and the FOIA exemption(s) under which the redaction was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(3) If technically feasible, place the exemption at the place of excision.

§ 1206.308 Referrals and consultations within NASA or other Federal Agencies.

(a) Referrals and consultations can occur within the Agency or outside the Agency.

(b) If a FOIA office (other than the Office of Inspector General) receives a request for records in its possession that another NASA FOIA office has responsibility over or is substantially concerned with, it will either:

(1) Consult with the other FOIA office before deciding whether to release or withhold the records; or

(2) Refer the request, along with the records, to that FOIA office for direct response.

(c) If the FOIA office that originally received the request refers all or part of the request to another FOIA office within the Agency for further processing, they will notify the requester of the partial referral and provide that FOIA contact information.

(d) If while responding to a request, the FOIA office locates records that originated with another Federal agency, it will generally refer the request and any responsive records to that other agency for a release determination and direct response.

(e) If the FOIA office refers all the records to another agency, it will document the referral and maintain a copy of the records that it refers; notify the requester of the referral in writing, unless that identification will itself disclose a sensitive, exempt fact; and will provide the contact information for the other agency and if known, the name of a contact at the other agency.

(f) If the FOIA office locates records that originated with another Federal agency while responding to a request, the office will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to NASA (for example, a record may be of primary interest to NASA if it was developed or prepared according to Agency regulations or directives, or in response to an Agency request); or

(2) NASA is in a better position than the originating agency to assess whether the record is exempt from disclosure; or

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(g) If the FOIA office receives a request for records that another Federal agency has classified under any applicable executive order concerning record classification, it must refer the request to that agency for response.

(h) If the FOIA office receives a request for records that are under the purview of another Federal agency, the office will return the request to the requester and may advise the requester to submit it directly to another agency. The FOIA office will then close the request.

(i) All consultations and referrals received by the Agency will be handled according to the date that the FOIA request initially was received by the first FOIA office.

Subpart D—Procedures and Time Limits for Responding to Requests

§ 1206.400 Procedures for processing queues and expedited processing.

(a) The FOIA office will normally process requests in the order in which they are received in each of the processing tracks.

(b) FOIA offices use three queues for multi-track processing depending on the complexity of the request. Once it has been determined the request meets the criteria in accordance with subpart C of this part, the FOIA office will place the request in one of the following tracks:

(1) Simple—A request that can be processed within 20 working days.

(2) Complex—A request that will take over 20 working days to process. (A complex request will generally require coordination with more than one office and a legal 10 working day extension for unusual circumstances (see § 1206.403) may be taken either up front or during the first 20 days of processing the request.)

(3) Expedited processing—A request for expedited processing will be processed in this track if the requester can show exceptional need or urgency that their request should be processed out of turn in accordance with paragraph (c) of this section.

(c) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve one or more of the following:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) Circumstances in which there is an urgency to inform the public about an actual or alleged Federal Government activity if the FOIA request is made by a person primarily engaged in disseminating information;

(i) In most situations, a person primarily engaged in disseminating information will be a representative of the news media and therefore, will qualify as a person primarily engaged in disseminating information.

(ii) To substantiate paragraph (c)(2) of this section, the requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news; or

(3) The loss of substantial due process rights.

(d) A request for expedited processing must contain a statement that:

(1) Explains in detail how the request meets one or more of the criteria in paragraph (c) of this section; and

(2) Certifies that the explanation is true and correct to the best of the requester's knowledge and belief.

(3) If the request is made referencing paragraph (c)(2) of this section, the requester must substantiate the public interest.

(e) A request for expedited processing may be made at any time. Requests

must be submitted to the FOIA office responsible for processing the requested records.

(f) The FOIA office must notify the requester of its decision to grant or deny expedited processing within 10 calendar days from the date of receipt.

(g) If expedited processing is granted, the request will be processed on a first-in, first-out basis in that queue.

(h) If expedited processing is denied, the FOIA office will notify the requester and provide information on appealing this decision in accordance with Subpart G of this part and place the request in the appropriate processing queue.

(i) If the FOIA office processing the request does not provide notification of either granting or denying the request for expedited processing within 10 calendar days from the date of receipt, the requester may file an appeal for non-response in accordance with subpart G of this part.

§ 1206.401 Procedures and time limits for acknowledgement letters and initial determinations.

(a) Following receipt of a request submitted under the FOIA, the FOIA staff will send an acknowledgement letter providing the case tracking number and processing track within ten (10) working days from date of receipt to the requester.

(b) An initial determination is 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 the FOIA.

(c) An initial determination on a request for an Agency record addressed in accordance with this regulation (to include one submitted in person at a FOIA office) shall be made (for example, to grant, partially grant or deny a request), and the requester shall be sent an initial determination letter within 20 working days after receipt of the request, as required by 5 U.S.C. 552(a)(6) (unless unusual circumstances exist as defined in § 1206.403).

(d) The basic time limit for a misdirected FOIA request (not a referral or consultation) begins on the date on which the request is first received by the appropriate FOIA office within the Agency, but in any event no later than ten (10) working days after the date the request is first received by a FOIA office designated to receive FOIA requests.

(e) Any notification of an initial determination that does not comply fully with the request for an Agency record, including those searches that produce no responsive documents, 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 requester of the right to appeal to the Administrator or the Inspector General, as appropriate, pursuant to subpart G of this part.

§ 1206.402 Suspending the basic time limit.

(a) In accordance with 5 U.S.C. 552(a)(6)(A)(ii)(I), the FOIA office may make one request to the requester for information to clarify a request and temporarily suspend (toll) the time (the 20-day period) while it is awaiting such information that it has reasonably requested from the requester. Receipt of the requester's response by the FOIA office to the Agency's request for additional information or clarification ends the temporary time suspension.

(b) In accordance with 5 U.S.C. 552(a)(6)(A)(ii)(II), the FOIA office may temporarily suspend (toll) the 20-day period as many times as is necessary to clarify with the requester issues regarding fees. Receipt of the requester's response by the FOIA office to the Agency's request for information regarding fees ends the temporary time suspension.

§ 1206.403 Time extensions.

(a) In ''unusual circumstances'' as defined in this section, the time limits for an initial determination and for a final determination may be extended, but not to exceed a total of 10 working days in the aggregate in the processing of any specific request for an Agency record. The extension must be taken before the expiration of the 20 working

day time limits. The requester will be notified in writing of:

(1) The unusual circumstances surrounding the extension of the time limit;

(2) The date by which the FOIA office expects to complete the processing of the request.

(b) Unusual circumstances are defined as:

(1) The need to search for and collect the requested records from offices other than the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous number of documents;

(3) The need to coordinate and/or consult with another NASA office or agency having a substantial subject-matter interest in the determination of the request.

(c) If initial processing time will exceed or is expected to exceed 30 working days, the FOIA office will notify the requester of the delay in processing and:

(1) Provide an opportunity to modify or limit the scope of the request to reduce processing time; and

(2) Provide appeal rights, since the FOIA office has exceeded the 30 working day time period.

(3) Shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

(d) The requester's refusal to reasonably modify the scope of a request or arrange an alternative timeframe for processing a request after being given the opportunity to do so may be considered a factor when determining whether exceptional circumstances exist. A delay that results from a predictable workload of requests does not constitute exceptional circumstances unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests.

Subpart E—Fees Associated With Processing Requests

§ 1206.500 Search.

(a) 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. A search will determine what specific documents, if any, are responsive to a request. A search for Agency records responsive to a request may be accomplished by manual or automated means.

(b) Search charges, as set forth in this part, may be billed 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 has been conducted or if located, cannot be made available under § 1206.308.

(c) In responding to FOIA requests, FOIA offices shall charge the following fees based on the date the request is received in the NASA FOIA Office unless a waiver or reduction of fees has been granted under § 1206.506. Fees will be determined on October 1st of each year based on the appropriate General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits of employees. Fees such as search, review, and duplication will be charged in accordance with the requester's fee category as defined in § 1206.507.

(d) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly GS-base salary, plus the District of Columbia locality payment, plus 16 percent for benefits of employees in the following three categories, as applicable:

(1) Clerical—Based on a GS–6, Step 5 (all employees at a GS–7 and below are classified as clerical for this purpose).

(2) Professional—Based on a GS–11, Step 7 pay (all employees at a GS–8 through GS–12 are classified as professional for this purpose);

(3) Managerial—Based on GS–14, Step 2, pay (all employees at a GS–13 and above are classified as managerial for this purpose).

(e) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(f) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the NARA, additional costs shall be

charged in accordance with the Transactional Billing Rate Schedule established by NARA.

§ 1206.501 Review.

(a) Review means the process of examining a document(s) located in response to a request to determine whether the document(s) or any portion thereof is disclosable. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(b) Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by Agency staff to determine whether an exemption applies to a particular record or portion of a record.

(c) Review fees will be charged to commercial use requesters.

(d) No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with an additional review of the records in order to consider the use of other exemptions may be assessed as review fees.

(e) Review fees will be charged at the same rates as those charged for a search under § 1206.500.

(f) Review fees can be charged even if the record(s) reviewed ultimately is not disclosed.

(g) Review fees will not include costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section.

§ 1206.502 Duplication.

(a) Duplication is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(b) FOIA offices shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the FOIA office in the form or format requested. If the records are not readily reproducible in the requested form or format, the Agency will so inform the requester. The requester may specify an alternative form or format that is available. If in this situation the requester refuses to specify an alternative form or format, the Agency will not process the request any further.

(c) Where standard-sized photocopies or scans are supplied, the FOIA office will provide one copy per request at the regular copy rate per page.

(d) For copies of records produced on tapes, disks, or other electronic media, FOIA offices will charge the direct costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under this subpart.

(e) If NASA staff must scan paper documents in order to accommodate a requester's preference to receive the records in an electronic format, the requester shall pay the appropriate copy fee charge per page as well as each quarter hour spent by personnel scanning the requested records. Fees will be the same as those charged for search under this subpart for each quarter hour spent by personnel scanning the requested records.

(f) For other forms of duplication, FOIA offices will charge the direct costs as well as any associated personnel costs. For standard-sized copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.15 per copy of each page; charges for double-sided copies will be $0.30. For copies of oversized documents, such as maps, charts, etc., fees will be assessed as direct costs. Charges for copies (and scanning) include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the direct cost to NASA of reproducing, copying, or scanning the record.

(g) 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 this part or the direct costs assessed to the Agency. The charge for computer time involved

and for any special supplies or materials used shall not exceed the direct cost to NASA.

(h) Reasonable standard fees 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 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.

(i) Complying with requests for special services such as those listed in this section is entirely at the discretion of NASA. 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.

§ 1206.503 Restrictions on charging fees.

(a) No search fees will be charged when the FOIA office fails to comply with the statutory time limits in response to a request if no unusual or exceptional circumstances apply to the processing of the request, as those terms are defined in Subpart D of this regulation.

(b) In the case of a requester as defined in § 1206.507(c)(2) (education and noncommercial scientific institution) and (c)(3) (representative of the news media), no duplication fees will be charged when the FOIA office fails to comply with the statutory time limits in response to a request if no unusual or exceptional circumstances apply to the processing of the request, as those terms are defined in subpart D of this part.

(c) Fees will not be charged unless they are over $50.00.

(d) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required to fulfill processing of the request.

§ 1206.504 Charging fees.

(a) When a FOIA office determines or estimates the fees to be assessed in accordance with this section will exceed $50.00, the FOIA office shall notify the requester unless the requester has indicated a willingness to pay fees as high as those anticipated. If a portion of the fees can be readily estimated, the FOIA office shall advise the requester accordingly.

(b) In cases in which a requester has been notified that actual or estimated fees are in excess of $50.00, the request shall be placed on hold and further work will not be completed until the requester commits in writing to pay the actual or estimated fees. Such a commitment must be made by the requester in writing, must indicate a given dollar amount or a willingness to pay all processing fees, and must be received by the FOIA office within 20 working days from the date of the letter providing notification of the fee estimate. If a commitment is not received within this period, the request shall be closed without further notification.

(c) After the FOIA office begins processing a request, if it finds that the actual cost will exceed the amount the requester previously agreed to pay, the FOIA office will: Stop processing the request; and promptly notify the requester of the higher amount. The request will be placed on hold until the fee issue has been resolved. If the issue is not resolved within 20 working days from the date of the notification letter, the request shall be closed without further notification.

(d) Direct costs, meaning those expenditures that NASA actually incurs in searching for, duplicating, and downloading computer files and documents in response to a FOIA request, will be included on the invoice as appropriate. 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), the cost of operating computers and other electronic equipment, such as photocopiers and scanners, the costs

associated with retrieving records stored at a Federal records center operated by the NARA, as well as costs for CDs and other media tools.

(e) NASA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the FOIA office. NASA will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) If processing fees are less than $50.00, NASA will send all releaseable documents (or portions thereof) following the completion of the initial determination. If fees are greater than $50.00, the documents will not be released until the invoice has been paid and verified by the FOIA office.

(g) Final billing will be sent when the initial determination has been completed. At that time the case will be closed.

§ 1206.505 Advance payments.

(a) For requests other than those described in paragraphs (b), (c), and (f) of this section, a FOIA office shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment for search, review and/or before records are released to a requester) is not an advance payment.

(b) When a FOIA office determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A FOIA office may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester.

(c) Where a requester has previously failed to pay a properly charged FOIA fee assessed by any FOIA office in the agency within 30 calendar days of the billing date, a FOIA office may require the requester to pay the full amount due, plus any applicable interest due on the outstanding debt, before the FOIA office begins to process a new request or continues to process a pending request or any pending remand of an appeal. Once the outstanding bill has been paid, the FOIA office may also require the requester to make an advance payment of the full amount of any anticipated fee before processing the new request.

(d) Where a FOIA office has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide further proof of identity.

(e) In cases in which a FOIA office requires advance payment, the request shall be placed on hold and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 20 working days after the date of the FOIA office's letter, the request will be closed without further notification.

(f) When advance payment is required in order to initiate processing, after a fee estimate has been determined, the FOIA office will require payment before continuing to process the request.

(g) The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the FOIA office will inform the requester of the contact information for that source.

§ 1206.506 Requirements for a waiver or reduction of fees.

(a) The burden is on the requester to justify an entitlement to a fee waiver. (See § 1206.507 for a discussion on fee categories.)

(b) Requests for a waiver or reduction of fees shall be considered on a case-by-case basis using the criteria in this section. These statutory requirements must be satisfied by the requester before properly assessable fees are waived or reduced under the statutory standard.

(c) Records shall be furnished without charge or at a reduced rate if the

requester has demonstrated, based on all available information, that disclosure of the information is in the public interest because it:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) Is not primarily in the commercial interest of the requester.

(d) In deciding whether a request for a fee waiver meets the requirements in § 1206.506(c)(1), the FOIA office will use the following factors, which must be addressed by the requester:

(1) Does the subject of the request specifically concern identifiable operations or activities of the Agency with a connection that is direct and clear, not remote or attenuated? For example, is the information requested clearly associated to current events?

(2) If the record(s) concern the operations or activities of the Government, is disclosure likely to contribute to an increased public understanding of those operations or activities? For example, are the disclosable contents of the record(s) meaningfully informative in relation to the subject matter of the request?

(3) Is the focus of the requester on contributing to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? The requester must demonstrate how he/she plans to disseminate the information. The dissemination of information must be to the general public or a reasonably broad audience. (Dissemination to a wide audience is not merely posting the documents on a Web site, but using his/her editorial skills to turn raw materials into a distinct work.)

(4) If there is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Agency operations, including the quality of Agency activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Agency.

(e) In deciding whether the fee waiver meets the requirements in § 1206.506(c)(2), the FOIA office will consider any commercial interest of the requester that would be furthered by the requested disclosure.

(1) Requesters are encouraged to provide explanatory information regarding this consideration.

(2) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.

(3) If the requester is a representative of a news media organization seeking information as part of a news gathering process, the FOIA office will presume that the public interest outweighs the requester's commercial interest.

(4) If the requester represents a business, corporation, or is an attorney representing such an organization, the FOIA office will presume that the commercial interest outweighs the public interest unless otherwise demonstrated.

(f) Where only some of the records to be released satisfy the requirements for a waiver of fees, a partial waiver shall be granted for those records.

(g) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Agency and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal.

(h) When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received by the office processing the original request.

(i) When deciding whether to waive or reduce fees, the FOIA office will rely on the fee waiver justification submitted in the request letter. If the request letter does not include sufficient justification, the FOIA office will either deny the fee waiver request or at its discretion, ask for additional justification from the requester.

(j) FOIA offices may make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees; however, the

FOIA staff may not assist a requester in composing a request, advising what specific records to request, or how to write a request to qualify for a fee waiver.

§ 1206.507 Categories of requesters.

(a) A request should indicate the fee category. If the requester does not indicate a fee category, or it is unclear to the FOIA office, the FOIA office will make a determination of the fee category based on the request. If the requester does not agree with their determination, he/she will be afforded the opportunity to provide information to support a different fee category.

(b) If the request is submitted on behalf of another person or organization (e.g., if an attorney is submitting a request on behalf of a client), the fee category will be determined by considering the underlying requester's identity and intended use of the information. The following table outlines the basic fee categories and applicable fees:

Requester category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes.
Educational and non-commercial scientific institutions	No	No	Yes (first 100 pages, or equivalent volume, without charge).
Representative of news media requester	No	No	Yes (first 100 pages, or equivalent volume, without charge).
All other requesters	Yes (first 2 hours without charge)	No	Yes (first 100 pages, or equivalent volume, without charge).

(c) The FOIA provides for three categories of requesters. However, for clarity purposes, NASA has broken them down to four for the purposes of determining fees. These four categories of FOIA requesters are: 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, which is indicated in the FOIA fee table above.

(1) *Commercial use requesters.* When NASA receives a request for documents appearing to be for commercial use, meaning a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests of either the requester or the person on whose behalf the request is made, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. NASA will not consider a commercial-use request for a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. 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. Commercial use requesters are not entitled to two (2) hours of search time or to 100 pages of duplication of documents without charge.

(2) *Education and non-commercial scientific institution requesters.* (i) 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 (not operated for commerce, trade or profit), 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. A request for educational purposes must be sent on the Institution's letterhead and signed by the Dean of the School or Department. Records requested for the intention of fulfilling credit requirements are not considered to be sought for a scholarly purpose.

(ii) For the purposes of a non-commercial scientific institution, it must be solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Requests must be sent on the letterhead of the scientific institution and signed by the responsible official in charge of the project/program associated with the subject of the documents that are being requested.

(3) *Representative of the news media.* (i) NASA shall provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages when the requester demonstrates the following:

(A) The requester's intended dissemination,

(B) Whether the information is current news and/or of public interest, and

(C) Whether the information sought will shed new light on agency statutory operations.

(ii) A representative of the news media is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, NASA shall also consider a requester's past publication record in making this determination. NASA's decision to grant a requester news media status for the purposes of assessing fees will be made on a case-by-case basis based upon the requesters intended use.

(iii) Requesters seeking this fee category who do not articulate sufficient information to support their request will not be included in this fee category. Additionally, FOIA staff may grant a partial fee waiver if the requester can articulate the information above for some of the documents.

(4) *All other requesters.* NASA shall charge requesters who do not fit into any of the categories mentioned in this section fees in accordance with the fee table above.

§ 1206.508 Aggregation of requests.

(a) 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.

(b) When NASA has reason to believe that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests on a single subject or related subjects for the purpose of avoiding the assessment of fees, NASA will aggregate any such requests and charge accordingly.

(c) NASA will consider that multiple requests made within a 30-day period were so intended submitted as such to avoid fees, unless there is evidence to the contrary.

(d) NASA will aggregate requests separated by a longer period of time only when there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(e) NASA will not aggregate multiple requests on unrelated subjects from one requester or organization.

§ 1206.509 Form of payment.

Payment shall be made by check or money order payable to the ''Treasury of the United States,'' or by credit card per instructions in the initial determination or billing invoice and sent to NASA.

§ 1206.510 Nonpayment of fees.

(a) 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 31 U.S.C. 3717.

(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.

§ 1206.511 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

Subpart F—Commercial Information

§ 1206.600 General policy.

(a) Notice shall be given to a submitter whenever the information requested is commercial information and has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the Act, or the Agency otherwise has reason to believe that the information may be protected from disclosure under Exemption 4. For the purpose of applying the notice requirements, commercial information is information provided by a submitter and in the possession of NASA, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the FOIA (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.

(b) A submitter is a person or entity outside the Federal Government from whom the Agency directly or indirectly obtains commercial or financial information. The term submitter includes, but is not limited to corporations, state governments, individuals, and foreign governments.

(c) The notice requirements of § 1206.601 will not apply if:

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

(2) Disclosure of the information is required by a statute (other than this part); or

(3) The submitter has received notice of a previous FOIA request which encompassed information requested in the later request, and the Agency intends to withhold and/or release information in the same manner as in the previous FOIA request.

(d) An additional limited exception to the notice requirements of § 1206.601, to be used only when all of the following exceptional circumstances are found to be present, authorizes the Agency to withhold information that is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice when:

(1) The Agency would be required to provide notice to over ten (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 § 1206.601, 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.

(e) The exception shall be used only with the approval of the Chief Counsel of the Center, the Counsel to the Inspector General, or the Associate General Counsel responsible for providing advice on the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

§ 1206.601 Notice to submitters.

(a) Except as provided in § 1206.603(b) and § 1206.603(c), the Agency shall provide a submitter with prompt written notice of a FOIA request that seeks its commercial information whenever required under § 1206.600(a).

(b) A notice to a submitter must include:

(1) The exact language of the request or an accurate description of the request;

(2) Access to or a description of the responsive records or portions thereof containing the commercial information to the submitter;

(3) A description of the procedures for objecting to the release of the possibly confidential information under § 1206.602;

(4) A time limit for responding to the Agency that shall not exceed 10 working days from the date of the letter sent to the submitter by the FOIA Office or publication of the notice (as set forth in § 1206.603(b)) to object to the release and to explain the basis for the objection;

(5) Notice that the information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(6) Notice that the Agency, not the submitter, is responsible for deciding whether the information shall be released or withheld;

(7) Notice that failing to respond within the timeframe specified under § 1206.601(b)(4) will create a presumption that the submitter has no objection to the disclosure of the information in question.

(c) 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.

§ 1206.602 Opportunity to object to disclosure.

(a) If a submitter has any objections to the disclosure of commercial information, the submitter must provide a detailed written statement to the FOIA office that specifies all factual and/or legal grounds for withholding the particular information under any FOIA exemptions.

(b) The submitter must include a daytime telephone number, an email and mailing address, and a fax number if available on a response to the FOIA office.

(c) A submitter who does not respond within the time period specified under this subpart will be considered to have no objection to disclosure of the information.

(d) Responses received by the FOIA office after the time period specified in § 1206.601(b)(4) will not be considered by the FOIA office. An extension of time to respond may be granted provided the submitter provides an explanation justifying additional time within the time period specified in § 1206.601(b)(4).

§ 1206.603 Notice of intent to disclose.

(a) The Agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. The Agency, not the submitter, is responsible for deciding whether the information will be released or withheld.

(b) 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 the following:

(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 information to the submitter; and

(3) A date after which disclosure is expected, which shall be no less than 10 working days from the date of the letter providing notification to the submitter by the FOIA Office (§ 1206.601).

(c) The FOIA office will provide notification regarding a FOIA lawsuit:

(1) To a submitter, when a requester brings suit seeking to compel disclosure of commercial information; or

(2) To a requester, when a submitter brings suit against the Agency in order to prevent disclosure of commercial information.

Subpart G—Appeals

1206.700 How to submit an appeal.

(a) A member of the public who has requested an Agency record in accordance with subpart C of this part, 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 § 1206.805, to the Inspector General within 30 days from the date of the initial determination letter.

(b) The appeal must:

(1) Be in writing;

(2) Be addressed to the Administrator, NASA Headquarters, Executive Secretariat, Washington, DC 20546, or, for records as specified in § 1206.805, to the Inspector General, NASA Headquarters, Washington, DC 20546;

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

(4) Include a copy of the initial request for the Agency record and a copy of the adverse initial determination along with any other correspondence with the FOIA office;

(5) To the extent possible, state the reasons the adverse initial determination should be reversed; and

(6) Be sent to the Administrator or the Inspector General, as appropriate, within 30 days of the date 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 § 1206.701(a)) shall run from the date of such waiver.

§ 1206.701 Actions on appeals.

(a) Except as provided in § 1206.403, the Administrator or designee, or in the case of records as specified in § 1206.805, the Inspector General or designee, shall make a final determination on an appeal and notify the appellant thereof, within 20 working days after the receipt of the appeal by the Administrator's Office.

(b) In ''unusual circumstances'' as defined in § 1206.403, the time limit for a final determination may be extended, but not to exceed a total of 10 working days in the aggregate in the processing of any specific appeal for an Agency record. The extension must be taken before the expiration of the 20 working day time limit. The appellant will be notified in writing in accordance with § 1206.403.

(c) If processing time will exceed or is expected to exceed 30 working days, the appellant will be notified of the delay in processing and the reason for the delay.

(d) 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.

(e) If a reversal in whole or in part of the initial determination requires additional document search or production, associated fees will be applicable in accordance with fee guidance in this regulation.

(f) 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);

(4) Provide a statement regarding the mediation services of the Office of Government Information Services (OGIS) as a non-exclusive alternative to litigation; and

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

(g) Before seeking a review by a court of a FOIA office's adverse initial determination, a requester must generally submit a timely administrative appeal in accordance with this part.

§ 1206.702 Litigation.

In any instance in which a requester brings suit concerning a request for an Agency record under this part, the matter shall promptly be referred to the General Counsel with a report on the details and status of the request.

Subpart H—Responsibilities

§ 1206.800 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.

§ 1206.801 Chief FOIA Officer.

(a) The Associate Administrator, Office of Communications, is designated as the Chief FOIA Officer for the Agency. The Chief FOIA Officer is delegated authority for administering the FOIA and all related laws and regulations within the Agency. The Associate Administrator has delegated the day-to-day oversight of the Agency FOIA Program to the Deputy Associate Administrator for Communications.

(b) The Deputy Associate Administrator for Communications has delegated the overall responsibility for developing and administering the FOIA program within NASA to the Principal Agency FOIA Officer, located in the Office of Communications. This includes:

(1) Developing regulations, guidelines, procedures, and standards for the Agency's FOIA program;

(2) Overseeing all FOIA offices and programs and ensuring they are in compliance with FOIA laws and regulations;

(3) Ensuring implementation of the FOIA Programs throughout the Agency and keeping the Chief FOIA Officer and the Deputy Associate Administrator for Communications informed of the Agency's FOIA performance;

(4) Providing program oversight, technical assistance, and training to employees to ensure compliance with the Act;

(5) Preparing the Agency's FOIA Annual Report to the Department of Justice (DOJ) and Congress, as well as the Chief FOIA Officer's Report;

(6) Preparing all other reports as required to DOJ/Congress or within the Agency;

(7) Developing, conducting, and reviewing all internal Agency FOIA training for NASA FOIA staff;

(8) Directly supervising the Headquarters FOIA Office.

(c) The Chief FOIA Officer is responsible for ensuring NASA has appointed a FOIA Public Liaison, who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes at each Center or Component.

§ 1206.802 General Counsel.

The General Counsel is responsible for the interpretation of 5 U.S.C. 552 and of this part, as well as providing legal guidance with regard to disclosure of Agency records. The General

Counsel is also responsible for the handling of appeals and litigation in connection with a request for an Agency record under this part.

§ 1206.803 NASA Headquarters.

Except as otherwise provided under this subpart, the Deputy Associate Administrator for Communications is responsible for the following:

(a) Delegating the authority for direct oversight of the Headquarters FOIA Office to the Principal Agency FOIA Officer.

(b) When denying records in whole or in part, ensuring the Headquarters FOIA Office consults with the General Counsel charged with providing legal advice to Headquarters before releasing an initial determination under § 1206.307.

§ 1206.804 NASA Centers and Components.

Except as otherwise provided in this subpart, in coordination with the Deputy Associate Administrator for Communications, the Director of each NASA Center or the Official-in-Charge of each Center, is responsible for ensuring the following:

(a) The Director of Public Affairs or the Head of the Public Affairs Office at the Center has delegated authority to process all FOIA requests at their respective Center.

(b) This delegated authority has further been delegated to the FOIA Officer at their Center or in the absence of a FOIA Officer, the FOIA Specialist, both of whom must report to and be supervised by their Director of Public Affairs or the Head of the Public Affairs Office.

(c) When denying records in whole or in part, the FOIA Officer at the Center will consult with the Chief Counsel or the Counsel charged with providing legal advice to that FOIA office before releasing an initial determination under § 1206.307.

§ 1206.805 Inspector General.

(a) The Inspector General or designee is responsible for making final determinations under § 1206.701, within the time limits specified in subpart G of this part, concerning audit, inspection and investigative records originating in the Office of the Inspector General records from outside the Government related to an audit, inspection or investigation, records prepared in response to a request from or addressed to the Office of the Inspector General, or other records 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 subpart C concerning Office of Inspector General records originating in the Office of the Inspector General, records from outside the Government related to Office of Inspector General records prepared in response to a request from or addressed to the Office of the Inspector General, or other records originating with the Office of the Inspector General, after consultation with the Counsel 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 D of this part.

(d) The Inspector General or designee is responsible for determining whether unusual circumstances exist under § 1206.403 that would justify extending 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 and field Inspector General Offices, as well as records located at the Headquarters Office of the Inspector General.

Subpart I—Location for Inspection and Request of Agency Records

§ 1206.900 FOIA offices and electronic libraries.

(a) NASA Headquarters and each NASA Center have a FOIA Electronic Library on the Internet. The Electronic library addresses are located on the NASA FOIA homepage *http://www.hq.nasa.gov/office/pao/FOIA/agency/*

(b) In addition, a requester may submit a FOIA request electronically. The addresses are located on the NASA FOIA homepage under each Center link.

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 prohibition in 18 U.S.C. 208.
1207.103 Designations of responsible officials.

Subpart B—Post-Employment Regulations

1207.201 Scope of subpart.
1207.202 Exemption for scientific and technological communications.

AUTHORITY: 5 U.S.C. 7301; 18 U.S.C. 207–208; 42 U.S.C. 2473(c)(1); 5 CFR 2635.102(b); 5 CFR part 2637; 5 CFR part 2640.

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 prohibition in 18 U.S.C. 208.

(a) *Prohibition*. Employees are prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to their knowledge, they, or any person whose interests are imputed to them under the statute, have a financial interest, if the particular matter will have a direct and predictable effect on that interest.

(b) *Specific waiver available*. A NASA employee may request a waiver of this prohibition. NASA may grant a specific waiver of the prohibition only if the Agency determines that the employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services. The waiver must be obtained before the employee participates in the matter.

(c) *Officials authorized to make waiver determinations*. (1) For the employees listed below, waivers must be approved by the Administrator or Deputy Administrator. No further delegation is authorized.

(i) Employees who are required by 5 CFR 2634.202 to file Public Financial Disclosure Reports;

(ii) Employees who are appointed under authority of section 203(c)(2) (''NASA Excepted Positions'') or section 203(c)(10) (''Alien Scientists'') of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(2) and 2473(c)(10));

(iii) Astronauts and astronaut candidates;

(iv) Chief Counsel; and

(v) Procurement Officers.

(2) For all other Headquarters employees, the Associate Administrator for Headquarters Operations may approve waivers of 18 U.S.C. 208. This authority may not be redelegated.

(3) For all other Center employees, the Center Director or Deputy Center Director may approve waivers of 18 U.S.C. 208. This authority may not be redelegated.

(d) *Procedures for specific waiver*. The employee's request for a waiver must be in writing. The request must describe the particular matter involved, the relevant duties of the employee, and the exact nature and amount of the disqualifying financial interest.

(1) *Headquarters employees*. (i) Those Headquarters employees described in paragraph (c)(1) of this section must submit their requests to the Official-in-Charge of the Headquarters office in

which they are employed and to the General Counsel for concurrence. The Official-in-Charge will then submit the request to the Administrator with recommendations on the proposed waiver.

(ii) Other Headquarters employees must submit their requests to the Associate General Counsel (General) for concurrence, and to the Associate Administrator for Headquarters Operations for approval.

(2) *Center employees*. (i) Those Center employees described in paragraph (c)(1) of this section must submit their requests to the Center Chief Counsel for concurrence and then to the Director of the Center where they are employed. The Center Director will provide the request, with recommendations, to the appropriate Enterprise Associate Administrator and to the General Counsel for review and submission to the Administrator.

(ii) Other Center employees must submit their requests to the Center Chief Counsel for concurrence, and then to their Center Director or Deputy Center Director for approval.

(3) Copies of approved waivers must be forwarded to the Associate Administrator for Human Resources and Education, the General Counsel, and the Office of Government Ethics.

(e) *Cross-references*. For regulations concerning general waiver guidance and exemptions under 18 U.S.C. 208, see 5 CFR part 2640.

[66 FR 59137, Nov. 27, 2001]

§ 1207.103 Designations of responsible officials.

(a) *Designated Agency Ethics Official*. The General Counsel of NASA is the Designated Agency Ethics Official and is delegated the authority to coordinate and manage NASA's ethics program as set forth in 5 CFR 2638.203.

(b) *Alternate Designated Agency Ethics Official*. The Associate General Counsel (General) is the Alternate Designated Agency Ethics Official.

(c) *Deputy Ethics Officials*. The following officials are designated as Deputy Ethics Officials:

(1) The Deputy General Counsel;

(2) The Associate General Counsel (General);

(3) The Senior Ethics Attorney assigned to the Associate General Counsel (General); and

(4) The Chief Counsel at each NASA Center and Component Facility.

(d) *Agency Designee*. As used in 5 CFR part 2635, the term ''Agency Designee'' refers to the following:

(1) For employees at NASA Headquarters, or for matters affecting employees Agencywide, the Associate Deputy Administrator, the Designated Agency Ethics Official, the Alternate Designated Agency Ethics Official, or the Chief of Staff; and

(2) For Center employees, the Center Director, who may delegate specific responsibilities of the Agency Designee to the Center Chief Counsel or to another official who reports directly to the Center Director.

(e) *Cross-references*. For regulations on the appointment, responsibilities, and authority of the Designated Agency Ethics Official, Alternate Designated Agency Ethics Official, and Deputy Ethics Officials, see 5 CFR part 2638. For the responsibilities of the Agency Designee, see 5 CFR part 2635.

[66 FR 59138, Nov. 27, 2001]

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).

§ 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

Sec.
1209.300 Scope.
1209.301 Authority.
1209.302 Establishment of Board.
1209.303 Functions of Board.
1209.304 Membership.
1209.305 Legal advice and assistance.

Subpart 4—Inventions and Contributions Board

1209.400 Scope.
1209.401 Establishment.
1209.402 Responsibilities.
1209.403 Organizational location.
1209.404 Membership.
1209.405 Supporting services.

Subparts 1–2 [Reserved]

Subpart 3—Contract Adjustment Board

AUTHORITY: Pub. L. 85–804 and 51 U.S.C. 20113.

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 this regulation.

[51 FR 28924, Aug. 13, 1986, as amended at 78 FR 20423, Apr. 5, 2013]

§ 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: 51 U.S.C. 20135(g) and 20136.

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 51 U.S.C. 20135(g) and pursuant to 14 CFR part 1245 subpart 1, 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) *Monetary awards for scientific and technical contributions.* (1) Under the authority of 51 U.S.C. 20136 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 the 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.

[76 FR 44462, July 26, 2011]

§ 1209.403 Organizational location.

The Board shall be established within an office or department of NASA as designated by the Administrator.

[76 FR 44462, July 26, 2011]

§ 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.

PARTS 1210–1211 [RESERVED]

PART 1212—PRIVACY ACT—NASA REGULATIONS

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AUTHORITY: The National Aeronautics and Space Act, as amended, 51 U.S.C. 20101 *et seq.;* 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 Centers, and NASA Component Installations, as defined in part 1201 of this chapter.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 Center, 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 Center.

(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) relates 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.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

Subpart 1212.2—Requests for Access to Records

§ 1212.200 Procedures for requesting records subject to the Privacy Act.

The procedures outlined in this subpart 1212.2 apply to the following types of requests made by individuals under the Privacy Act 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 under 5 U.S.C. 552a(d)(1); and

(c) For an accounting of disclosures of the individual's Privacy Act records under 5 U.S.C. 552a(c)(3).

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 Center Privacy Manager or Freedom of Information Act (FOIA) Office at NASA Headquarters or Field 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, time periods in which the records are believed to have been compiled, 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 Center Privacy Manager receives a request for access, the Privacy Manager will record the date of receipt and immediately forward the request to the responsible system manager for handling.

(f) If the Center FOIA Office receives a first party request for records or access, the FOIA Office will process the request under the Privacy Act pursuant to this part.

(g) 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.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012; 78 FR 8963, Feb. 7, 2013]

§ 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.

(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(f) (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.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 under the provisions of 5 U.S.C. 552a(d)(2). 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.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 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) The Associate Deputy Administrator or designee is responsible for making final determinations of appeals as specified in paragraphs (a)(1) through (3) of this section for all Agency records, with the exception of those records originating in the Office of the Inspector General for which the Inspector General is responsible for making final determinations of appeals.

(c) An appeal shall:

(1) Be in writing and addressed to the Associate Deputy Administrator, NASA, Washington, DC 20546 or to the Inspector General, NASA Headquarters, Washington, DC 20546, for records as specified in paragraph (b) of this section;

(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.

(d) 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)).

(e) A final determination on an appeal shall be made within 30 work days after its receipt by the Associate Deputy Administrator or Inspector General for appeals concerning records originating in the Office of the Inspector General, unless, for good cause shown, the Associate Deputy Administrator or Inspector General 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.

(f) 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).

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 Associate 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.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 sections: (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 noncriminal investigative files may exist 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 fulfill 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).

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

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.

(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.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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. This is not to be construed to require the withholding of names and addresses otherwise permitted to be made public.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 Center Security Officer or Center Information Technology Security Officer for electronic records maintained in automated systems. Safeguards must insure the security and confidentiality of records and protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(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.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 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 Associate Deputy Administrator.

The Associate Deputy Administrator is responsible for:

(a) Making final Agency determinations on appeals (§ 1212.400), except on those related to records originating in the Office of the Inspector General;

(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)), except for an appeal related to records originating in the Office of the Inspector General.

[57 FR 4928, Feb. 11, 1992, as amended at 77 FR 60621, Oct. 4, 2012]

§ 1212.702 The Inspector General.

The Inspector General is responsible for:

(a) Making final Agency determinations on appeals related to records originating with the Office of the Inspector General (§ 1212.400), and

(b) Authorizing an extension for making a final determination on an appeal related to records originating with the Office of the Inspector General (§ 1212.400(e)).

[77 FR 60622, Oct. 4, 2012]

§ 1212.703 NASA Chief Information Officer.

(a) The NASA Chief Information Officer 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 Chief Information Officer may establish a position of 'NASA Privacy Act Officer,'designate someone to function as such an officer, and delegate to that officer any of the functions described in paragraph (a) of this section.

[57 FR 4928, Feb. 11, 1992. Redesignated and amended at 77 FR 60622, Oct. 4, 2012]

§ 1212.704 Headquarters and Field Centers or Component Facilities.

(a) Officials-in-Charge of Headquarters Offices, Directors of NASA Field Centers and Officials-in-Charge of Component Facilities 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(f)); and

(4) Providing appropriate oversight for responsibilities and authorities exercised by system managers under their jurisdiction (§ 1212.705).

(5) Establish a position of Center Privacy Manager to assist in carrying out the responsibilities listed in this section.

(b) [Reserved]

[57 FR 4928, Feb. 11, 1992. Redesignated and amended at 77 FR 60622, Oct. 4, 2012; 78 FR 8964, Feb. 7, 2013]

§ 1212.705 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 this part, NASA Policy Directive (NPD) 1382.17 and NASA Procedural Requirements (NPR) 1382.1.

(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 Associate 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(f)(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 § 1212.203 of this part. 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 Center shall be subject to any conditions or limitations imposed in accordance with § 1212.704(a)(4) and (5).

[57 FR 4928, Feb. 11, 1992. Redesignated and amended at 77 FR 60622, Oct. 4, 2012]

§ 1212.706 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.

[57 FR 4928, Feb. 11, 1992. Redesignated at 77 FR 60622, Oct. 4, 2012]

§ 1212.707 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.

[57 FR 4928, Feb. 11, 1992. Redesignated at 77 FR 60622, Oct. 4, 2012]

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).

SOURCE: 71 FR 49989, Aug. 24, 2006, unless otherwise noted.

§ 1213.100 Scope.

This part sets forth policy governing the release of public information, which is defined as information in any form provided to news and information media, especially information that has the potential to generate significant media or public interest or inquiry. Examples include, but are not limited to, press releases, media advisories, news features, and Web postings. Not included under this definition are scientific and technical reports, Web postings designed for technical or scientific interchange, and technical information presented at professional meetings or in professional journals.

§ 1213.101 Applicability.

(a) This policy applies to NASA Headquarters, NASA Centers, and Component Facilities.

(b) In the event of any conflict between this policy and any other NASA policy, directive, or regulation, this policy shall govern and supersede any previous issuance or directive.

(c) The requirements of this part do not apply to the Office of Inspector General regarding its activities.

§ 1213.102 Policy.

(a) NASA, a scientific and technical Agency, is committed to a culture of openness with the media and public that values the free exchange of ideas,

data, and information as part of scientific and technical inquiry. Scientific and technical information from or about Agency programs and projects will be accurate and unfiltered.

(b) Consistent with NASA statutory responsibility, NASA will ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof.'' Release of public information concerning NASA activities and the results of NASA activities will be made in a timely, equitable, accurate, and complete manner.

(c) To ensure timely release of information, NASA will endeavor to ensure cooperation and coordination among the Agency's scientific, engineering, and public affairs communities.

(d) In keeping with the desire for a culture of openness, NASA employees may, consistent with this policy, speak to the press and the public about their work.

(e) This policy does not authorize or require disclosure of information that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise restricted by statute, regulation, Executive Order, or other Executive Branch policy or NASA policy (e.g., OMB Circulars, NASA Policy Directives). Examples of information not releasable under this policy include, without limitation, information that is, or is marked as, classified information, procurement sensitive information, information subject to the Privacy Act, other sensitive but unclassified information, and information subject to privilege, such as predecisional information or attorney-client communications.

§ 1213.103 Responsibilities.

(a) The Assistant Administrator for Public Affairs is responsible for developing and administering an integrated Agency-wide communications program, establishing Agency public affairs policies and priorities, and coordinating and reviewing the performance of all Agency public affairs activities. The Assistant Administrator will develop criteria to identify which news releases and other types of public information will be issued nationwide by NASA Headquarters. Decisions to release public information nationwide by NASA Headquarters will be made by the Assistant Administrator for Public Affairs or his/her designee.

(b) NASA's Mission Directorate Associate Administrators and Mission Support Office heads have ultimate responsibility for the technical, scientific, and programmatic accuracy of all information that is related to their respective programs and released by NASA.

(c) Under the direction of the Assistant Administrator for Public Affairs, Public Affairs Officers assigned to Mission Directorates are responsible for the timely and efficient coordination of public information covering their respective programs. This coordination includes review by appropriate Mission Directorate officials. It also includes editing by public affairs staff to ensure that public information products are well written and appropriate for the intended audience. However, such editing shall not change scientific or technical data or the meaning of programmatic content.

(d) Center Public Affairs Directors are responsible for implementing their portion of the Agency's communications program, adhering to Agency policies, procedures, and priorities, and coordinating their activities with Headquarters (and others where appropriate). They are responsible for the quality of public information prepared by Center Public Affairs Officers. They also are responsible for the day-to-day production of public information covering their respective Center activities, which includes obtaining the necessary Center concurrences and coordinating, as necessary, with the appropriate Headquarters Public Affairs Officers.

(e) Center Directors have ultimate responsibility for the accuracy of public information that does not require the concurrence of Headquarters. *See* § 1213.104(d).

(f) All NASA employees are required to coordinate, in a timely manner, with the appropriate Public Affairs Officers prior to releasing information that has the potential to generate significant media or public interest or inquiry.

(g) All NASA Public Affairs Officers are required to notify the appropriate

Headquarters Public Affairs Officers, in a timely manner, about activities or events that have the potential to generate significant media or public interest or inquiry.

(h) All NASA public affairs employees are expected to adhere to the following code of conduct:

(1) Be honest and accurate in all communications.

(2) Honor publication embargoes.

(3) Respond promptly to media requests, and respect media deadlines.

(4) Act promptly to notify the public of, and correct, erroneous information, either internally or externally.

(5) Promote the free flow of scientific and technical information.

(6) Protect non-public information.

(i) All NASA employees are responsible for adhering to plans (including schedules) for activities established by public affairs offices and senior management for the coordinated release of public information.

(j) All NASA-funded missions will have a public affairs plan, approved by the Assistant Administrator for Public Affairs, which will be managed by Headquarters and/or a designated NASA Center.

(k) Public affairs activities for NASA-funded missions will not be managed by non-NASA institutions, unless authorized by the Assistant Administrator for Public Affairs.

§ 1213.104 Public information coordination and concurrence.

(a) *General.* All NASA employees involved in preparing and issuing NASA public information are responsible for proper coordination among Headquarters and Center offices to include review and clearance by appropriate officials prior to issuance. Such coordination will be accomplished through procedures developed and published by the NASA Assistant Administrator for Public Affairs.

(b) *Coordination.* To ensure timely release of public information, Headquarters and Center Public Affairs Officers are required to coordinate to obtain review and clearance by appropriate officials, keep each other informed of changes, delays, or cancellation of releases, and provide advance notification of the actual release.

(c) All public information shall be coordinated through the appropriate Headquarters offices, including review by the appropriate Mission Directorate Associate Administrator and Mission Support Office head, or their designees, to ensure scientific, technical, and programmatic accuracy, and review by the Assistant Administrator for Public Affairs or his/her designee to ensure that public information products are well written and appropriate for the intended audience.

(d) Centers may, however, without the full coordination of Headquarters, issue public information that is institutional in nature, of local interest, or has been deemed not to be a Headquarters release. These releases must be coordinated through the appropriate Center offices and approved by the Center Director and Center Public Affairs Director. The Center Public Affairs Director is required to provide proper notification to the Office of Public Affairs, NASA Headquarters, prior to release. The Assistant Administrator for Public Affairs or his/her designee will determine which public information will be issued nationwide by NASA Headquarters and shall publish guidelines for the release of public information that may be issued by Centers without clearance from Headquarters offices.

(e) *Dispute Resolution.* Any dispute arising from a decision to proceed or not proceed with the issuance of a news release or other type of public information will be addressed and resolved by the Assistant Administrator for Public Affairs with the appropriate Mission Directorate Associate Administrator, Mission Support Office head, Center Director, and others, such as Center Public Affairs Directors, as necessary. However, the appropriate Mission Directorate Associate Administrator shall be the arbiter of disputes about the accuracy or characterization of programmatic, technical, or scientific information. Additional appeals may be made to the Chief of Strategic Communications and to the Office of the Administrator. When requested by a Center Public Affairs Director, an explanation of the resolution will be provided in writing to all interested Agency parties.

§ 1213.105 Interviews.

(a) Only spokespersons designated by the Assistant Administrator for Public Affairs, or his/her designee, are authorized to speak for the Agency in an official capacity regarding NASA policy, programmatic, and budget issues.

(b) In response to media interview requests, NASA will offer articulate and knowledgeable spokespersons who can best serve the needs of the media and the American public. However, journalists may have access to the NASA officials they seek to interview, provided those NASA officials agree to be interviewed.

(c) NASA employees may speak to the media and the public about their work. When doing so, employees shall notify their immediate supervisor and coordinate with their public affairs office in advance of interviews whenever possible, or immediately thereafter, and are encouraged, to the maximum extent practicable, to have a Public Affairs Officer present during interviews. If Public Affairs Officers are present, their role will be to attest to the content of the interview, support the interviewee, and provide post-interview follow up with the media, as necessary.

(d) NASA, as an Agency, does not take a position on any scientific conclusions. That is the role of the broad scientific community and the nature of the scientific process. NASA scientists may draw conclusions and may, consistent with this policy, communicate those conclusions to the media. However, NASA employees who present personal views outside their official area of expertise or responsibility must make clear that they are presenting their individual views—not the views of the Agency—and ask that they be sourced as such.

(e) Appropriated funds may only be used to support Agency missions and objectives consistent with legislative or presidential direction. Government funds shall not be used for media interviews or other communication activities that go beyond the scope of Agency responsibilities and/or an employee's official area of expertise or responsibility.

(f) Media interviews will be ''on-the-record'' and attributable to the person making the remarks, unless the interviewee is authorized to do otherwise by the Assistant Administrator for Public Affairs or Center Public Affairs Director, or their designees. Any NASA employee providing material to the press will identify himself/herself as the source.

(g) Audio recordings may be made by NASA with consent of the interviewee.

(h) NASA employees are not required to speak to the media.

(i) 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.

§ 1213.106 Preventing release of classified information to the media.

(a) Release of classified information in any form (e.g., documents, through interviews, audio/visual) to the news media is prohibited. The disclosure of classified information to unauthorized individuals may be cause for prosecution and/or disciplinary action against the NASA employee involved. Ignorance of NASA policy and procedures regarding classified information does not release a NASA employee from responsibility for preventing any unauthorized release. See NPR 1600.1, Chapter 5, Section 5.23 for internal NASA guidance on management of classified information. For further guidance that applies to all agencies, see Executive Order 12958, as amended, ''Classified National Security Information,'' and its implementing directive at 32 CFR parts 2001 and 2004.

(b) 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 and Office of Security and Program Protection.

(c) For classified operations and/or programs managed under the auspices of a DD Form 254, ''*Contract Security Classification Specification,*'' all inquiries concerning this activity will be responded to by the appropriate PAO official designated in Item 12 on the DD Form 254.

(d) For classified operations and/or information owned by other Government agencies (e.g., DOD, DOE), all inquiries will be referred to the appropriate Agency Public Affairs Officer as established in written agreements.

§ 1213.107 Preventing unauthorized release of sensitive but unclassified (SBU) information/material to the news media.

(a) All NASA SBU information requires accountability and approval for release. Release of SBU information to unauthorized personnel is prohibited. Unauthorized release of SBU information may result in prosecution and/or disciplinary action. Ignorance of NASA policy and procedures regarding SBU information does not release a NASA employee from responsibility for unauthorized release. See NPR 1600.1, Chapter 5, Section 5.24 for guidance on identification, marking, accountability and release of NASA SBU information.

(b) Examples of SBU information include: proprietary information of others provided to NASA under nondisclosure or confidentiality agreement; source selection and bid and proposal information; information subject to export control under the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR); information subject to the Privacy Act of 1974; predecisional materials such as national space policy not yet publicly released; pending reorganization plans or sensitive travel itineraries; and information that could constitute an indicator of U.S. Government intentions, capabilities, operations, or activities or otherwise threaten operations security.

(c) Upon request for access to information/material deemed SBU, coordination must be made with the information/material owner to determine if the information/material may be released. Other organizations that play a part in SBU information identification, accountability, and release (e.g., General Counsel, External Relations, Procurement) must be consulted for assistance and/or concurrence prior to release.

(d) Requests for SBU information from other Government agencies must be referred to the NASA program or other office responsible for handling the information as SBU.

§ 1213.108 Multimedia materials.

(a) NASA's multimedia material, from all sources, will be made available to the information media, the public, and to all Agency Centers and contractor installations utilizing contemporary delivery methods and emerging digital technology.

(b) Centers will provide the media, the public, and as necessary, NASA Headquarters with:

(1) Selected prints and original or duplicate files of news-oriented imagery and other digital multimedia material generated within their respective areas.

(2) Selected video material in the highest quality format practical, which, in the opinion of the installations, would be appropriate for use as news feed material or features in preproduced programs and other presentations.

(3) Audio and/or video files of significant news developments and other events of historic or public interest.

(4) Interactive multimedia features that can be incorporated into the Agency's Internet portal for use by internal and external audiences, including the media and the general public.

(5) To the extent practicable, these products will be in forms and media accessible to the public at large, as well as to specific user groups requesting them, if any.

§ 1213.109 News releases concerning international activities.

(a) Releases of information involving NASA activities, views, programs, or projects involving another country or an international organization require prior coordination and approval by the Headquarters offices of External Relations and Public Affairs.

(b) NASA Centers and Headquarters offices will report all visits proposed by representatives of foreign news media to the Public Affairs Officer of the Office of External Relations for appropriate handling consistent with all NASA policies and procedures.

PART 1214—SPACE FLIGHT

Subpart 1214.1—General Provisions Regarding Space Shuttle Flights of Payloads for Non-U.S. Government, Reimbursable Customers

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Subpart 1214.1—General Provisions Regarding Space Shuttle Flights of Payloads for Non-U.S. Government, Reimbursable Customers

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§ 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

Months before scheduled launch date when termination occurs	Termination fee, percent of Shuttle standard flight price
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.

(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 de-integration) 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.

(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.

[1] Typical standard Shuttle services repeated for clarity.

(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 prorata 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 will be adjusted on a yearly basis, if necessary, to assure recovery 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 OF PART 1214—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 OF PART 1214—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—International Space Station Crew

AUTHORITY: 42 U.S.C. sections 2455, 2473, and 2475; 18 U.S.C. 799.

SOURCE: 65 FR 80303, Dec. 21, 2000, unless otherwise noted.

§ 1214.400 Scope.

(a) This subpart sets forth policy and procedures with respect to International Space Station crewmembers provided by NASA for flight to the International Space Station.

(b) In order to provide for the safe operation, maintenance of order, and proper conduct of crew aboard the International Space Station, the January 29, 1998, Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America Concerning Cooperation on the Civil International Space Station (hereinafter Agreement), which establishes and governs the International Space Station, requires the development and approval of a Code of Conduct for International Space Station crew. Pursuant to Article 11 of the Agreement, each International Space Station partner is obliged to ensure that crewmembers which it provides observe the Code of Conduct.

§ 1214.401 Applicability.

This subpart applies to all persons provided by NASA for flight to the International Space Station, including U.S. Government employees, uniformed members of the Armed Services, U.S. citizens who are not employees of the U.S. Government, and foreign nationals.

§ 1214.402 International Space Station crewmember responsibilities.

(a) All NASA-provided International Space Station crewmembers are subject to specified standards of conduct, including those prescribed in the Code of Conduct for the International Space Station Crew, set forth as § 1214.403. NASA-provided International Space Station crew members may be subject to additional standards and requirements, as determined by NASA, which will be made available to those NASA-provided crewmembers, as appropriate.

(1) NASA-provided International Space Station crewmembers who are not citizens of the United States will be required to enter into an agreement with NASA in which they agree to comply with specified standards of conduct, including those prescribed in the Code of Conduct for the International Space Station Crew (§ 1214.403). Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(2) NASA-provided International Space Station crewmembers who are citizens of the United States but are not employees of the U.S. Government will be required to enter into an agreement with NASA in which they agree to comply with specified standards of conduct, including those prescribed in the Code of Conduct for the International Space Station Crew (§ 1214.403). Any such agreement will be

signed on behalf of NASA by the NASA General Counsel or designee.

(3) NASA-provided International Space Station crewmembers who are employed by a branch, department, or agency of the U.S. Government may, as determined by the NASA General Counsel, be required to enter into an agreement with NASA to comply with specified standards of conduct, including those prescribed in the Code of Conduct for the International Space Station Crew (§ 1214.403). Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(b) All NASA-provided personnel on board the International Space Station are additionally subject to the authority of the International Space Station Commander and shall comply with Commander's orders and directions.

§ 1214.403 Code of Conduct for the International Space Station Crew.

The Code of Conduct for the International Space Station Crew, which sets forth minimum standards for NASA-provided International Space Station crewmembers, is as follows:

CODE OF CONDUCT FOR THE INTERNATIONAL SPACE STATION CREW

I. INTRODUCTION

A. Authority

This Code of Conduct for the International Space Station (ISS) crew, hereinafter referred to as Crew Code of Conduct (CCOC), is established pursuant to:

(1) Article 11 (Crew) of the intergovernmental Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America Concerning Cooperation on the Civil International Space Station (the IGA) signed by the Partner States on January 29, 1998; and

(2) Article 11 (Space Station Crew) of the Memoranda of Understanding between, respectively, the National Aeronautics and Space Administration of the United States of America (NASA) and the Canadian Space Agency (CSA), NASA and the European Space Agency (ESA), NASA and the Government of Japan (GOJ), and NASA and the Russian Space Agency (RSA) Concerning Cooperation on the Civil International Space Station (the MOU's), which require, inter alia, that the crew Code of Conduct be developed by the partners.

B. Scope and Content

The partners have developed and approved this CCOC to: establish a clear chain of command on-orbit; establish a clear relationship between ground and on-orbit management; and establish a management hierarchy; set forth standards for work and activities in space, and, as appropriate, on the ground; establish responsibilities with respect to elements and equipment; set forth disciplinary regulations; establish physical and information security guidelines; and define the ISS Commander's authority and responsibility, on behalf of all the partners, to enforce safety procedures, physical and information security procedures and crew rescue procedures for the ISS. This CCOC and the disciplinary policy referred to in Section IV shall not limit the application of Article 22 of the IGA. This CCOC succeeds the NASA-RSA Interim Code of Conduct, which was developed pursuant to Article 11.2 of the MOU between NASA and RSA to cover early assembly prior to other partners' flight opportunities.

This CCOC sets forth the standards of conduct applicable to all ISS crewmembers during preflight, on-orbit, and post-flight activities, (including launch and return phases). ISS crewmembers are subject to additional requirements, such as the ISS Flight Rules, the disciplinary policy, and requirements imposed by their Cooperating Agency or those relating to the Earth-to-Orbit Vehicle (ETOV) transporting an ISS crewmember. Each ISS crewmember has a right to know about such additional requirements. ISS crewmembers will also abide by the rules of the institution hosting the training, and by standards and requirements defined by the Multilateral Crew Operations Panel (MCOP), the Multilateral Space Medicine Board (MSMB) and the Multilateral Medical Operations Panel (MMOP). Each ISS crewmember will be informed by the Cooperating Agency providing him or her of the responsibilities of ISS crewmembers under the IGA, the MOU's and this CCOC. Further, each ISS crewmember will be educated by the Cooperating Agency providing him or her through the crew training curriculum and normal program operations as to ISS program rules, operational directives and management policies. Completion of postflight activities shall not affect an ISS crewmember's continuing obligations under Section V of this CCOC.

C. Definitions

For the purposes of the CCOC:

(1) ''Cooperating Agency'' means NASA, CSA, ESA, Rosaviakosmos (formerly RSA) and, in the case of Japan, the Science and Technology Agency of Japan (STA) and, as

appropriate, the National Space Development Agency of Japan (NASDA), assisting agency to STA.

(2) ''Crew Surgeon'' means a Flight Surgeon assigned by the MMOP to any given expedition. He or she is the lead medical officer and carries primary responsibility for the health and well-being of the entire ISS crew.

(3) ''Disciplinary policy'' means the policy developed by the MCOP to address violations of the CCOC and impose disciplinary measures.

(4) ''ETOV'' means Earth-to-Orbit Vehicle travelling between Earth and the ISS.

(5) ''Flight Director'' means the Flight Director in control of the ISS.

(6) ''Flight Rules'' means the set of rules used by the Cooperating Agencies to govern flight operations.

(7) ''ISS crewmembers'' means any person approved for flight to the ISS, including both ISS expedition crew and visiting crew, beginning upon assignment to the crew for a specific and ending upon completion of the postflight activities related to the mission.

II. General Standards

A. Responsibilities of ISS Crewmembers

ISS Crewmembers shall comply with the CCOC. Accordingly, during preflight, on-orbit, and postflight activities, they shall comply with the ISS Commander's orders, all Flight and ISS program Rules, operational directives, and management policies, as applicable. These include those related to safety, health, well-being, security, and other operational or management matters governing all aspects of ISS elements, equipment, payloads and facilities, and non-ISS facilities, to which they have access. All applicable rules, regulations, directives, and policies shall be made accessible to ISS crewmembers through appropriate means, coordinated by the MCOP.

B. General Rules of Conduct

ISS Crewmembers' conduct shall be such as to maintain a harmonious and cohesive relationship among the ISS crewmembers and an appropriate level of mutual confidence and respect through an interactive, participative, and relationship-oriented approach which duly takes into account the international and multicultural nature of the crew and mission.

No ISS crewmember shall, by his or her conduct, act in a manner which results in or creates the appearance of: (1) Giving undue preferential treatment to any person or entity in the performance of ISS activities; and/or (2) adversely affecting the confidence of the public in the integrity of, or reflecting unfavorably in a public forum on, any ISS partner, partner state or Cooperating Agency.

ISS crewmembers shall protect and conserve all property to which they have access for ISS activities. No such property shall be altered or removed for any purpose other than those necessary for the performance of ISS duties. Before altering or removing any such property, ISS crewmembers shall first obtain authorization from the Flight Director, except as necessary to ensure the immediate safety of ISS crewmembers or ISS elements, equipment, or payloads.

C. Use of Position

ISS crewmembers shall refrain from any use of the position of ISS crewmember that is motivated, or has the appearance of being motivated, by private gain, including financial gain, for himself or herself or other persons or entities. Performance of ISS duties shall not be considered to be motivated by private gain. Furthermore, no ISS crewmember shall use the position of ISS crewmember in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to himself or herself or other persons or entities.

D. Mementos and Personal Effects

Each ISS crewmember may carry and store mementos, including flags, patches, insignia, and similar small items of minor value, onboard the ISS, for his or her private use, subject to the following:

(1) mementos are permitted as a courtesy, not an entitlement; as such they shall be considered as ballast as opposed to a payload or mission requirement and are subject to manifest limitations, on-orbit stowage allocations, and safety considerations;

(2) mementos may not be sold, transferred for sale, used or transferred for personal gain, or used or transferred for any commercial or fundraising purpose. Mementos which, by their nature, lend themselves to exploitation by the recipients, or which, in the opinion of the Cooperating Agency providing the ISS crewmember, engender questions as to good taste, will not be permitted.

An ISS crewmember's personal effects, such as a wristwatch, will not be considered mementos. Personal effects of any nature may be permitted, subject to constraints of mass/volume allowances for crew personal effects, approval of the ISS crewmember's Cooperating Agency, and approval of the transporting Cooperating Agency and considerations of safety and good taste.

If a Cooperating Agency carries and stores items onboard the ISS in connection with separate arrangements, these items will not be considered mementos of the ISS crewmembers.

III. AUTHORITY AND RESPONSIBILITIES OF THE ISS COMMANDER, CHAIN OF COMMAND AND SUCCESSION ONORBIT; RELATIONSHIP BETWEEN GROUND AND ON-ORBIT MANAGEMENT

A. Authority and Responsibilities of the ISS Commander

The ISS Commander, as an ISS crewmember, is subject to the standards detailed elsewhere in this CCOC, in addition to the command-specific provisions set forth below:

The ISS Commander will seek to maintain a harmonious and cohesive relationship among the ISS crewmembers and an appropriate level of mutual confidence and respect through an interactive, participative, and relationship-oriented approach which duly takes into account the international and multicultural nature of the crew and mission.

For avoidance of doubt, nothing in this Section shall affect the ability of the MCOP to designate the national of any Partner State as an ISS Commander.

(1) During Preflight and Postflight Activities

The ISS Commander is the leader of the crew and is responsible for forming the individual ISS crewmembers into a single, integrated team. During preflight activities, the ISS Commander, to the extent of his or her authority, leads the ISS crewmembers through the training curriculum and mission-preparation activities and seeks to ensure that the ISS crewmembers are adequately prepared for the mission, acting as the crew's representative to the ISS program's training, medical, operations, and utilization authorities. During postflight activities, the ISS Commander coordinates as necessary with these authorities to ensure that the ISS crewmembers complete the required postflight activities.

(2) During On-Orbit Operations

(a) General

The ISS Commander is responsible for and will, to the extent of his or her authority and the ISS on-orbit capabilities, accomplish the mission program implementation and ensure the safety of the ISS crewmembers and the protection of the ISS elements, equipment, or payloads.

(b) Main Responsibilities

The ISS Commander's main responsibilities are to: (1) Conduct operations in or on the ISS as directed by the Flight Director and in accordance with the Flight Rules, plans and procedures; (2) direct the activities of the ISS crewmembers as a single, integrated team to ensure the successful completion of the mission; (3) fully and accurately inform the Flight Director, in a timely manner, of the ISS vehicle configuration, status, commanding, and other operational activities on-board (including off-nominal or emergency situations); (4) enforce procedures for the physical and information security of operations and utilization data; (5) maintain order; (6) ensure crew safety, health and well-being including crew rescue and return; and (7) take all reasonable action necessary for the protection of the ISS elements, equipment, or payloads.

(c) Scope of Authority

During all phases of on-orbit activity, the ISS Commander, consistent with the authority of the Flight Director, shall have the authority to use any reasonable and necessary means to fulfill his or her responsibilities. This authority, which shall be exercised consistent with the provisions of Sections II and IV, extends to: (1) the ISS elements, equipment, and payloads; (2) the ISS crewmembers; (3) activities of any kind occurring in or on the ISS; and (4) data and personal effects in or on the ISS where necessary to protect the safety and well-being of the ISS crewmembers and the ISS elements, equipment, and payloads. Any matter outside the ISS Commander's authority shall be within the purview of the Flight Director.

Issues regarding the Commander's use of such authority shall be referred to the Flight Director as soon as practicable, who will refer the matter to appropriate authorities for further handling. Although other ISS crewmembers may have authority over and responsibility for certain ISS elements, equipment, payloads, or tasks, the ISS Commander remains ultimately responsible, and solely accountable, to the Flight Director for the successful completion of the activities and the mission.

B. Chain of Command and Succession On-orbit

(1) The ISS Commander is the highest authority among the ISS crewmembers on-orbit. The MCOP will determine the order of succession among the ISS crewmembers in advance of flight, and the Flight Rules set forth the implementation of a change of command.

(2) Relationship of the ISS Commander to ETOV and Other Commanders

The Flight Rules define the authority of the ETOV Commander, the Rescue Vehicle Commander, and any other commanders, and set forth the relationship between their respective authorities and the authority of the ISS Commander.

C. Relationship Between the ISS Commander (On-Orbit Management) and the Flight Director (Ground Management)

The Flight Director is responsible for directing the mission. A Flight Director will

be in charge of directing real-time ISS operations at all time. The ISS Commander, working under the direction of the Flight Director and in accordance with the Flight Rules, is responsible for conducting on-orbit operations in the manner best suited to the effective implementation of the mission. The ISS Commander, acting on his or her own authority, is entitled to change the daily routine of the ISS crewmembers where necessary to address contingencies, perform urgent work associated with crew safety and the protection of the ISS elements, equipment or payloads, or conduct critical flight operations. Otherwise, the ISS Commander should implement the mission as directed by the Flight Director. Specific roles and responsibilities of the ISS Commander and the Flight Director are described in the Flight Rules. The Flight Rules outline decisions planned in advance of the mission and are designed to minimize the amount of real-time discussion required during mission operations.

IV. DISCIPLINARY REGULATIONS

ISS crewmembers will be subject to the disciplinary policy developed and revised as necessary by the MCOP and approved by the Multilateral Coordination Board (MCB). The MCOP has developed an initial disciplinary policy which has been approved by the MCB. The disciplinary policy is designed to maintain order among the ISS crewmembers during preflight, on-orbit and postflight activities. The disciplinary policy is administrative in nature and is intended to address violations of the CCOC. Such violations may, inter alia, affect flight assignments as an ISS crewmember. The disciplinary policy does not limit a Cooperating Agency's right to apply relevant laws, regulations, policies, and procedures to the ISS crewmembers it provides, consistent with the IGA and the MOU's.

V. PHYSICAL AND INFORMATION SECURITY GUIDELINES

The use of all equipment and goods to which ISS crewmembers have access shall be limited to the performance of ISS duties. Marked or otherwise identified as export controlled data and marked proprietary data obtained by an ISS crewmember in the course of ISS activities shall only be used in the performance of his or her ISS duties. With respect to data first generated on-board the ISS, the ISS crewmembers will be advised by the appropriate Cooperating Agency or by the data owner or provider through that Cooperating Agency as to the proprietary or export-controlled nature of the data and will be directed to mark and protect such data and to continue such protection for as long as the requirements for such protection remain in place. Additionally, ISS crewmembers shall act in a manner consistent with the provisions of the IGA and the MOU's regarding protection of operations data, utilization data, and the intellectual property of ISS users. They shall also comply with applicable ISS program rules, operational directives, and management policies designed to further such protections.

Personal information about ISS crewmembers, including all medical information, private family conference, or other private information, whether from verbal, written, or electronic sources, shall not be used or disclosed by other ISS crewmembers for any purpose, without the consent of the affected ISS crewmember, except as required for the immediate safety of ISS crewmembers or the protection of ISS elements, equipment, or payloads. In particular, all personal medical information, whether derived from medical monitoring, investigations, or medical contingency events, shall be treated as private medical information and shall be transmitted in a private and secure fashion in accordance with procedures to be set forth by the MMOP. Medical data which must be handled in this fashion includes, for example, biomedical telemetry, private medical communications, and medical investigation data. Nothing in this paragraph shall be interpreted to limit an ISS crewmember's access to all medical resources aboard the ISS, to ground-based medical support services, or to his or her own medical data during preflight, on-orbit, and postflight activities.

VI. PROTECTION OF HUMAN RESEARCH SUBJECTS

No research on human subjects shall be conducted which could, with reasonable foresight, be expected to jeopardize the life, health, physical integrity, or safety of the subject.

No research procedures shall be undertaken with any ISS crewmember as a human subject without: (1) written approval by the Human Research Multilateral Review Board (HRMRB) and (2) the full written and informed consent of the human subject. Each such approval and consent shall be obtained prior to the initiation of such research, and shall fully comply with the requirements of the HRMRB. The HRMRB is responsible for procedures for initiation of new experiments on-orbit when all consent requirements have been met, but the signature of the human subject cannot be obtained; explicit consent of the human subject will nonetheless be required in all such cases. Subjects volunteering for human research protocols may at their own discretion, and without providing a rationale, withdraw their consent for participation at any time, without prejudice, and without incurring disciplinary action. In

addition, approval or consent for any research may be revoked at any time, including after the commencement of the research, by: the HRMRB, the Crew Surgeon, the Flight Director, or the ISS Commander, as appropriate, if the research would endanger the ISS Crew Member or otherwise threaten the mission success. A decision to revoke consent by the human subject or approval by the other entities listed above will be final.

§ 1214.404 Violations.

This subpart 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 may be cited for violating title 18 of the U.S. Code and could be fined or imprisoned not more than 1 year, or both.

Subpart 1214.5 [Reserved]

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 onboard 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 onboard 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'' 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.

(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.

[1] Typical standard Shuttle services repeated for clarity.

(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.

Subparts 1214.9–1214.10 [Reserved]

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 and publicized periodically unless specifically canceled by NASA.

(b) Civilian applicants may apply at any time.

(c) 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.

(d) The Assistant Administrator for Equal Opportunity Programs, NASA Headquarters, will provide assistance in the recruiting process.

[54 FR 37940, Sept. 14, 1989, as amended at 68 FR 19948, Apr. 23, 2003]

§ 1214.1102 Evaluation of applications.

(a) All incoming applications will be reviewed to determine whether or not applicants meet basic qualifications. Those not meeting the basic qualification requirements will be so notified 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) A rating panel composed of discipline experts will review and rate qualified applicants as ''Qualified'' or ''Highly Qualified.''

(c) Efforts will be made to ensure that minorities and females are included among these discipline experts on the rating panel.

(d) The criteria for each level will be developed 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. This evaluation process will be monitored to ensure adherence to applicable policy, laws, 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.

[54 FR 37940, Sept. 14, 1989, as amended at 68 FR 19948, Apr. 23, 2003]

§ 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, a cutoff date for the acceptance of applications will be established. Applications received after the date of the request will be maintained and processed for the next selection.

[54 FR 37940, Sept. 14, 1989, as amended at 68 FR 19948, Apr. 23, 2003]

§ 1214.1104 Evaluation and ranking of highly qualified candidates.

(a) A selection board consisting of discipline experts, and such other persons as appropriate, will 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.''

[54 FR 37940, Sept. 14, 1989, as amended at 68 FR 19948, Apr. 23, 2003]

§ 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.

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 TDRSS, 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. The reimbursement policy is designed to comply with the Office of Management and Budget Circular A–25 on User Charges, dated September 23, 1959, as updated, 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.

[77 FR 6952, Feb. 10, 2012]

§ 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. Cooperative missions are not

under the purview of this subpart. The arrangements for TDRSS services for cooperative missions will be covered in an agreement, as a consequence of negotiations between NASA and the other concerned party. Any agreement which includes provision for any TDRSS service will require signatory concurrence by the Deputy Associate Administrator for SCaN prior to dedicating SCaN resources for support of a cooperative mission.

[77 FR 6952, Feb. 10, 2012]

§ 1215.102 Definitions.

(a) *User*. Any non-U.S. Government representative or entity that enters into an agreement with NASA to use TDRSS services.

(b) *TDRSS*. TDRSS, including Tracking and Data Relay Satellites (TDRS), WSC, GRGT, and the necessary TDRSS operational areas, interface devices, and NASA communication circuits that unify the above into a functioning system. It specifically excludes the user ground system/TDRSS interface.

(c) *Bit stream*. The electronic signals acquired by TDRSS from the user craft or the user-generated input commands for transmission to the user craft.

(d) *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.

[77 FR 6952, Feb. 10, 2012]

§ 1215.103 Services.

(a) *Standard services*. These are services which TDRSS is capable of providing to low-Earth orbital user spacecraft or other terrestrial users. Data are delivered to WSC or GRGT. A detailed description of services is provided in the GSFC Space Network Users' Guide, 450–SNUG. Contact the Chief, Networks Integration Management Office, at the address in Section 1215.108(d) to obtain a copy of the SNUG.

(1) Tracking service.

(2) Data acquisition service.

(3) Command transmission service.

(b) *Required Support Services*. These are support activities that are required to obtain TDRSS services.

(1) Prelaunch support planning, analysis, and documentation.

(2) Compatibility testing.

(3) Prelaunch support for data-flow testing and related activities.

(4) User services scheduling.

(c) *Mission-unique services*. Other tracking and data services desired by the user that are beyond the standard and required support services defined above. The associated charges for these services will be identified and assessed on a case-by-case basis.

[77 FR 6952, Feb. 10, 2012]

§ 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 TDRSS in the form of one or more digital or analog bit streams synchronized to associated clock streams at WSC or GRGT.

(b) User data-handling requirements beyond WSC or GRGT 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 WSC in the event of a NASA Integrated Services Network (NISN) 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 agreed-to 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.

[77 FR 6952, Feb. 10, 2012]

§ 1215.106 User command and tracking data.

(a) User command data shall enter TDRSS via the NISN interface at WSC or GRGT.

(b) NASA is required to have knowledge of the user satellite orbital elements to sufficient accuracy to permit TDRSS 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 meet TDRSS operational requirements.

(2) The user shall ensure that a sufficient quantity of tracking data is received to permit the determination of the user satellite orbital elements. The Flight Dynamics Facility (FDF) at GSFC will provide the orbit determination service to these users. The charges for this service will be negotiated between the FDF and the user and will be dependent on user requirements.

[77 FR 6952, Feb. 10, 2012]

§ 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 SNUG, as early as possible. This action allows the user to evaluate the tradeoffs available among various TDRSS services, spacecraft design, operations planning, and other significant mission parameters. It is recommended that potential users contact the NIMO as early as possible for assistance in performing the trade studies. When these 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 shall be addressed to SCaN at NASA Headquarters, as follows: Deputy Associate Administrator: Space Communications and Navigation Division, National Aeronautics and Space Administration, Washington, DC 20546.

(b) Upon review and acceptance of the service request, preliminary analyses shall be performed to determine the feasibility of meeting the proposed requirements.

(c) If the request is determined to be feasible, the user and SCaN shall negotiate an agreement for provision of the requested services. Acceptance of user requests for TDRSS service is the sole prerogative of NASA.

(d) Upon approval of the agreement by both parties, GSFC will be assigned 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 SCaN at NASA Headquarters (see Section 108, paragraph (a) for mailing address) and GSFC, as follows: Chief: Networks Integration Management Office, Code 450.1, NASA Goddard Space Flight Center, M/S 450.1, 8800 Greenbelt Road Greenbelt, MD 20771.

[77 FR 6953, Feb. 10, 2012]

§ 1215.109 Scheduling user service.

(a) User service shall be scheduled only by NASA. TDRSS services will be provided in accordance with operational priorities established by the NASA Administrator or his/her designee. See Appendix A 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 service. Priorities will be different for emergency service 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. Requests for normally scheduled service must be received by the schedulers at the GSFC WSC Data Services Management Center (DSMC) no later than 21 days prior to the requested support time.

(2) At times, emergency service requirements will override normal schedule priority. Under emergency service conditions, disruptions to scheduled service will occur.

(3) The DSMC reserves the sole right to schedule, reschedule, or cancel TDRSS service.

(4) 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.

(c) General user service requirements, which will be used for preliminary planning and mission modeling, should include all pertinent information necessary for NASA to determine if the proposed service is achievable. Contact NIMO to discuss usage and requirements.

(d) Such user service requirements information typically includes:

(1) Date of service initiation.

(2) The type of TDRSS services desired (e.g., multiple access, tracking, *etc.*), and the frequency and duration of each service.

(3) Orbit or trajectory parameters and tracking data requirements.

(4) Spacecraft events significant to tracking, telemetry or command requirements.

(5) Communications systems specifics, including location of antennas and other related information dealing with user tracking, command, and data systems.

(6) Special test requirements, data flows, and simulations, *etc.*

(7) Identification of terrestrial data transport requirements, interface points, and delivery locations, including latency and line loss recovery.

(e) To provide for effective planning, reference Appendix A, Typical New User Activity Timeline.

[77 FR 6953, Feb. 10, 2012]

§ 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.

No service shall be provided without an approved agreement.

[77 FR 6953, Feb. 10, 2012]

§ 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 at the time of service.

(b) For standard services, the user shall be charged only for services rendered, except that if a total cancellation of service occurs, the user 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 72 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 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.

[77 FR 6953, Feb. 10, 2012]

§ 1215.114 Service rates.

(a) Rates for TDRSS services will be established by the DAA for SCaN.

(b) Per-minute rates will reflect TDRSS total return on investment and operational and maintenance costs.

(c) The rate per minute by service and type of user is available on the following Web site: *https://www.spacecomm.nasa.gov/spacecomm/programs/Space_network.cfm*.

(d) The per-minute charge for TDRSS service is computed by multiplying the charge per minute for the appropriate service by the number of minutes utilized.

[77 FR 6953, Feb. 10, 2012]

§ 1215.115 Payment and billing.

(a) The procedure for billing and payment of standard TDRSS services is as follows:

(1) NASA shall be reimbursed by customers in connection with the use of Government property and services provided under an approved reimbursable agreement. Advance payment for services is required. Advance payments shall be scheduled to keep pace with the rate at which NASA anticipates incurring costs. NASA will provide a Customer Budget/Estimate (CBE) for services rendered nominally 60–90 days in advance, or as otherwise agreed, of the first anticipated property use or required service date for each mission. The full cost of the mission shall be paid by the customer not later than 30 days prior to the first anticipated property use or required service date.

(2) In some cases, an advance partial payment will be required six—nine months prior to the first anticipated property use or required service date in order for advance planning work and/or travel to take place. The amount of this partial payment and its receipt shall be negotiated on an as-needed basis. Adjustments to the amounts prepaid will be made to the succeeding billings as the actual services are rendered.

(3) If the customer fails to make payment by the payment due date, NASA may terminate the agreement and any subagreements for breach of agreement after notice to the customer is given of this breach and failure to cure such breach within a time period established by NASA.

(b) Late payments by the user will require the user to pay a late payment charge.

[77 FR 6954, Feb. 10, 2012]

APPENDIX A TO PART 1215—ESTIMATED SERVICE RATES IN 1997 DOLLARS FOR TDRSS STANDARD SERVICES (BASED ON NASA ESCALATION ESTIMATE)

Time: Project conceptualization (at least two years before launch; Ref. § 1215.108(a)).

Activity: Submit request for access to TDRSS. Upon preliminary acceptance of the service requirements by NASA Headquarters, communications for the reimbursable development of a Space Act Agreement (SAA) will begin. Prior to finalization of the Memorandum of Agreement (MOA), an estimate for the services will be issued. After SAA signature, full funding of the effort must be received prior to NASA initiating any activities associated with the effort. (Ref. § 1215.115(a)(1)).

Time: 18 months before launch (Ref. § 1215.109(c).

Activity: After full funding has been received and distributed to the executing NASA entities, submit general user requirements to permit preliminary planning. Contact will occur to facilitate the integration process for access to TDRSS. If appropriate,

initiate action with the Federal Communications Commission for license to communicate with TDRSS (Ref. § 1215.107(b)).

Time: 12 months before launch (earlier if possible).

Activity: Provide detailed requirements for technical definition and development of operational and interface control documents. (Ref. § 1215.109(d)).

Time: 3 weeks prior to a Scheduled Support Period (SSP).

Activity: Submit scheduling request to NASA covering a weekly period. Receive schedule from NASA based on principles of priority (Ref. § 1215.109(b)). User confirmation of the schedule is required.

Time: Up to 72 hours prior to an SSP.

Activity: Can cancel an SSP without charge (Ref. § 1215.113(b)(1)).

Time: Up to 45 minutes prior to an SPP.

Activity: Can schedule an SSP if a time slot is available without impacting another user.

Time: Up to 10 minutes prior to an SSP.

Activity: Can schedule an SSP utilizing TDRSS unused time (TUT).

[77 FR 6954, Feb. 10, 2012]

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).	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.
2 weeks prior to an SSP.	Can cancel an SSP without charge (Ref. § 1215.113(a)(1)).
Up to 12 hours prior to an SSP.	Can schedule an SSP if a time slot is available without impacting another user.
Up to 45 minutes prior to an SPP.	Schedule requests will be charged at the disruptive update rate (Ref. § 1215.109(b)(5)).
Between SSP minus 45 minutes and the SSP.	Emergency service requests will be responded to per the priority system (Ref. § 1215.109(b)(3)) and assessed the emergency service rate.
Real-Time.	

[56 FR 28049, June 19, 1991]

PART 1216—ENVIRONMENTAL QUALITY

Subpart 1216.1—Policy on Environmental Quality and Control

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1216.101 Applicability.
1216.102 Policy.
1216.103 Responsibilities of NASA officials.

Subpart 1216.2—Floodplain and Wetlands Management

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1216.201 Applicability.
1216.202 Responsibility of NASA officials.
1216.203 Definition of key terms.
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Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

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1216.302 Responsibilities.
1216.303 NEPA process in NASA planning and decision making.
1216.304 Categorical exclusions.
1216.305 Actions requiring environmental assessments.

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APPENDIX A TO SUBPART 1216.3 OF PART 1216—ACRONYMS AND DEFINITIONS

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 (51 U.S.C. 20101 *et seq.*); The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508).

SOURCE: 77 FR 3103, Jan. 23, 2012, unless otherwise noted.

§ 1216.300 Scope.

(a) This subpart implements NEPA, setting forth NASA's policies and procedures for the early integration of environmental considerations into planning and decision making.

(b) Through this subpart, NASA adopts the CEQ regulations implementing NEPA (40 CFR parts 1500–1508) and supplements those regulations with this subpart 1216.3, for actions proposed by NASA that are subject to NEPA requirements. This subpart is to be used in conjunction with the CEQ regulations. Consistent with the CEQ regulations at 40 CFR part 1500.3, no trivial violation of this part shall give rise to any independent cause of action. This subpart and NASA's NEPA policy are available on NASA's Public Portal at *http://www.nasa.gov/agency/nepa/*(under NEPA *Process*).

§ 1216.301 Applicability.

This subpart applies to all organizational elements of NASA.

§ 1216.302 Responsibilities.

(a) The NASA Senior Environmental Official (SEO) (as defined in Appendix A to this subpart) is responsible for overseeing and guiding NASA's integration of NEPA into the Agency's planning and decision making. The SEO, with the assistance of the Office

of the General Counsel (OGC), is responsible for developing NASA NEPA regulations and maintaining up-to-date Agency-wide NEPA guidance that fully integrates NEPA analysis into Agency planning and decision-making processes. The SEO shall monitor this process to ensure that these regulations and the associated Agency guidance are achieving their purposes. In addition, the NASA SEO is responsible for coordinating with other Federal agencies and the CEQ and consolidating and transmitting NASA's comments on EISs and other NEPA documentation prepared by other Federal agencies:

(1) The NASA Headquarters/Environmental Management Division (HQ/EMD) is delegated the SEO's overall responsibility of implementing NEPA functions and guiding NASA's integration of NEPA into the Agency's planning and decision making for all NASA activities. The HQ/EMD provides advice and consultation to all NASA entities in implementing their assigned responsibilities under NEPA. Interested persons can obtain information on the status of EISs and other elements of the NEPA process by contacting the NASA NEPA Manager at HQ/EMD identified at *http://www.nasa.gov/agency/nepa/NEPATeam.html*.

(2) Each NASA Center has an environmental management office that guides and supports the working-level functions of the NEPA process, such as evaluating proposed actions; developing, reviewing, and approving required documentation; and advising project managers.

(b) The Responsible Official shall ensure that planning and decision making for each proposed Agency action complies with these regulations and with Agency NEPA policy and guidance provided by the SEO, HQ/EMD, and the Center's environmental management office. For facility programs and projects, the Responsible Official is the individual responsible for establishing, developing, and maintaining the institutional capabilities required for the execution of programs and projects (e.g., Center Director, facility manager). For other programs and projects, (e.g., space flight programs/projects, R&D programs/projects) the Responsible Official is the NASA official responsible for the formulation and implementation of the program or project (e.g., The Associate Administrator for Science Mission Directorate, Center Director).

(c) NASA must comply with this subpart when considering issuance of a permit, lease, easement, or grant to a non-Federal party and may seek such non-Federal party's assistance in obtaining necessary information and completing the NEPA process. The Responsible Official(s) for such action(s), in consultation with HQ/EMD and/or the Center's environmental management office, will determine the type of environmental information needed from the non-Federal party and the extent of the non-Federal party's participation in the necessary NEPA process.

§ 1216.303 NEPA process in NASA planning and decision making.

(a) NEPA requires the systematic examination of the environmental consequences of implementing a proposed Agency action. Full integration of the NEPA process with NASA project and program planning improves Agency decisions and ensures that:

(1) Planning and decision making support NASA's strategic plan commitment to sustainability and environmental stewardship and comply with applicable environmental statutes, regulations, and policies.

(2) The public is appropriately engaged in the decision-making process.

(3) Procedural risks and delays are minimized.

(b) Determining the appropriate level of NEPA review and documentation for a proposed NASA action will depend upon the scope of the action and the context and intensity of the reasonably foreseeable environmental impacts.

(c) The environmental impacts of a proposed Agency action must be considered, along with technical, economic, and other factors that are reasonably foreseeable, beginning in the early planning stage of a proposed action. NASA will take no action which would have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of its NEPA review.

§ 1216.304 Categorical exclusions.

(a) Categorical Exclusions (CatExs) are categories of Agency actions with no individually or cumulatively significant impact on the human environment and for which neither an EA nor an EIS is required. The use of a CatEx is intended to reduce paperwork, improve Government efficiency, and eliminate delays in the initiation and completion of proposed actions having no significant impact.

(b) A proposed action may be categorically excluded if the action fits within a category of actions eligible for exclusion (such categories are listed in paragraph (d) of this section)), and the proposed action does not involve any extraordinary circumstances as described in paragraph (c) of this section:

(c) Extraordinary circumstances that will preclude the use of CatExs occur when the proposed action:

(1) Has a reasonable likelihood of having (individually or cumulatively) significant impacts on public health, safety, or the environment.

(2) Imposes uncertain or unique environmental risks.

(3) Is of significantly greater scope or size than is normal for this category of action.

(4) Has a reasonable likelihood of violating Federal, federally recognized Indian tribe, State, and/or local law or requirements imposed for the protection of the environment.

(5) Involves impacts on the quality of the environment that are likely to be environmentally controversial.

(6) May adversely affect environmentally sensitive resources, such as, but not limited to, federally listed threatened or endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact has been resolved through another environmental review process; e.g., the Clean Water Act (CWA), the Coastal Zone Management Act (CZMA).

(7) May adversely affect known national natural landmarks, or cultural or historic resources, including, but not limited to, property listed on or eligible for the National Register of Historic Places, unless the impact has been resolved through another environmental review process; e.g., the National Historic Preservation Act (NHPA).

(d) Specific NASA actions meeting the criteria for being categorically excluded from the requirements for EAs and EISs are as follows:

(1) Administrative Activities including:

(i) Personnel actions, organizational changes, and procurement of routine goods and services.

(ii) Issuance of procedural rules, manuals, directives, and requirements.

(iii) Program budget proposals, disbursements, and transfer or reprogramming of funds.

(iv) Preparation of documents, including design and feasibility studies, analytical supply and demand studies, reports and recommendations, master and strategic plans, and other advisory documents.

(v) Information-gathering exercises, such as inventories, audits, studies, and field studies, including water sampling, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, and routine data collection and analysis activities.

(vi) Preparation and dissemination of information, including document mailings, publications, classroom materials, conferences, speaking engagements, Web sites, and other educational/informational activities.

(vii) Software development, data analysis, and/or testing, including computer modeling.

(viii) Interpretations, amendments, and modifications to contracts, grants, or other awards.

(2) Operations and Management Activities including:

(i) Routine maintenance, minor construction or rehabilitation, minor demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment, such as buildings, roads, grounds, utilities, communication systems, and ground support systems, such as space tracking and data systems.

(ii) Installation or removal of equipment, including component parts, at

existing Government or private facilities.

(iii) Contribution of equipment, software, technical advice, exchange of data, and consultation to other agencies and public and private entities, where such assistance does not control a receiving entity's program, project, or activity.

(iv) NASA ceremonies, commemorative events, and memorial services.

(v) Routine packaging, labeling, storage, and transportation of hazardous materials and wastes, in accordance with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements.

(3) Research and Development (R&D) Activities including:

(i) Research, development, and testing in compliance with all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements and Executive orders.

(ii) Use of small quantities of radioactive materials in a laboratory or in the field. Uses include material for instrument detectors, calibration, and other purposes. Materials must be licensed, as required, and properly contained and shielded.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders. This applies to lasers used in spacecraft, aircraft, laboratories, watercraft, or outdoor activities.

(4) Real and Personal Property Activities including:

(i) Acquisition, transfer, or disposal of any personal property, or personal property rights or interests.

(ii) Granting or acceptance of easements, leases, licenses, rights-of-entry, and permits to use NASA-controlled property, or any other real property, for activities which, if conducted by NASA, would be categorically excluded in accordance with this section. This assumes that NASA has included any required notices in transfer documentation and any terms and conditions necessary to ensure protection of the environment, as applicable (Record of Environmental Consideration (REC) required).

(iii) Transfer or disposal of real property or real property rights or interests if the change in use is one which, if conducted by NASA, would be categorically excluded in accordance with this section (REC required).

(iv) Transfer of real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) will complete any necessary NEPA review prior to any change in land use (REC required).

(v) Acquisition of real property (including facilities) where the land use will not change substantially (REC required).

(5) Aircraft and Airfield Activities including:

(i) Periodic aircraft flight activities, including training and research and development, which are routine and comply with applicable Federal, federally recognized Indian tribe, State, and/or local law or requirements, and Executive orders.

(ii) Relocation of similar aircraft not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (e.g., noise), or permanent personnel or logistics support requirements at the receiving installation (REC required).

(e) The Responsible Official shall review the proposed action in its early planning stage and will consider the scope of the action and the context and intensity of any environmental impacts to determine whether there are extraordinary circumstances that could result in environmental impacts. If extraordinary circumstances exist, the Responsible Official will either withdraw the proposed action or initiate an EA or EIS.

(f) The NASA SEO will review the categorical exclusions at least every seven years, in accordance with CEQ guidance, to determine whether modifications, additions, or deletions are

appropriate, based upon NASA's experience. Recommendations for modifications, additions, or deletions shall be submitted to the SEO for consideration and informal discussion with the CEQ.

§ 1216.305 Actions requiring environmental assessments.

(a) The Responsible Official will prepare an EA when a proposed action cannot be categorically excluded, and the proposed action is not expected to result in impacts that require analysis in an EIS. The Responsible Official will consider the scope of the action and the context and intensity of any environmental impacts when determining whether to prepare an EA.

(b) Typical NASA actions normally requiring an EA include:

(1) Specific spacecraft development and space flight projects/programs (as defined in Appendix A to this subpart).

(2) Actions altering the ongoing operations at a NASA Center which could lead directly, indirectly, or cumulatively to substantial natural or physical environmental impacts.

(3) Construction or modifications of facilities which are not minor.

(4) Proposed actions that are expected to result in significant changes to established land use.

(5) A space flight project/program that would return extraterrestrial samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive an Unrestricted Earth Return categorization (as defined in Appendix A to this subpart) from NASA's Planetary Protection Office (PPO) or the NASA Planetary Protection Subcommittee prior to the return of samples to the Earth.

§ 1216.306 Actions normally requiring an EIS.

(a) NASA will prepare an EIS for actions with the potential to significantly impact the quality of the human environment, including actions for which an EA analysis demonstrates that significant impacts will potentially occur which will not be reduced or eliminated by changes to the proposed action or mitigation of its potentially significant impacts.

(b) Typical NASA actions normally requiring an EIS include:

(1) Development and operation of new launch vehicles or space transportation systems.

(2) [Reserved]

(c) Development and operation of a space flight project/program which would launch and operate a nuclear reactor or radioisotope power systems and devices using a total quantity of radioactive material greater than the quantity for which the NASA Nuclear Flight Safety Assurance Manager may grant nuclear safety launch approval (*i.e.*, a total quantity of radioactive material for which the A2 Mission Multiple (see definitions in Appendix A to this subpart) is greater than 10)).

(d) Development and operation of a space flight project/program which would return samples to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A to this subpart) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.

(e) Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.

(f) Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

§ 1216.307 Programmatic EAs, and EISs, and tiering.

NASA encourages the analysis of actions at the programmatic level for those programs similar in nature or broad in scope. Programmatic NEPA analyses may take place in the form of an EA or EIS. These documents allow ''tiering'' of NEPA documentation for subsequent or specific actions.

§ 1216.308 Supplemental EAs and EISs.

As detailed in CEQ regulations, supplemental documentation may be required for previous EAs or EISs (see 40 CFR 1502.9). If changed circumstances require preparation of a supplemental

EA or EIS, such document will be prepared following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, NASA may choose to conduct scoping.

§ 1216.309 Mitigation and monitoring.

When the analysis proceeds to an EA or EIS and mitigation measures are selected to avoid or reduce environmental impacts, such mitigation measures will be identified in the EA/FONSI or the EIS Record of Decision (ROD). NASA will implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSIs and/or RODs and will monitor their implementation and effectiveness. The Responsible Official will ensure that funding requests for such mitigation measures are included in the program or project budget.

§ 1216.310 Classified actions.

(a) Classification does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.

(b) When classified information can reasonably be separated from other information and a meaningful environmental analysis can be produced, unclassified documents will be prepared and processed in accordance with these regulations. Classified portions will be kept separate and provided to properly cleared reviewers and decision makers in the form of a properly classified document that meets the requirements of these regulations to the extent permitted, given such classification.

§ 1216.311 Emergency responses.

(a) When the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation, in accordance with the provisions in §§ 1216.305 and 1216.307 of this subpart, then the following provisions apply:

(1) The Responsible Official may take urgently needed actions that are necessary to control the immediate impacts of the emergency needed to mitigate harm to life, property, or resources. When taking such actions, the Responsible Official shall, to the extent practical, mitigate foreseeable adverse environmental impacts.

(2) [Reserved]

(b) At the earliest practicable time, the Responsible Official shall also notify the SEO of the emergency situation and the action(s) taken. The SEO will determine the appropriate NEPA action associated with the urgent actions taken as a result of the emergency. If the urgent actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

(c) If the Responsible Official proposes emergency actions which continue beyond the urgent actions taken as a result of the emergency, and these actions are not categorically excluded, the Responsible Official will consult with the SEO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

APPENDIX A TO SUBPART 1216.3 OF PART 1216—ACRONYMS AND DEFINITIONS

CatEx Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
CWA Clean Water Act
CZMA Coastal Zone Management Act
DoI (U.S.) Department of the Interior
EA Environmental Assessment
EMD Environmental Management Division
EIS Environmental Impact Statement
FONSI Finding of No Significant Impact
FR Federal Register
GSA General Services Administration
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
SEO Senior Environmental Official
OGC Office of the General Counsel
PPO Planetary Protection Office
REC Record of Environmental Consideration
ROD Record of Decision
U.S.C. United States Code

DEFINITIONS

1. A2 Mission Multiple—The A2 Mission Multiple is a calculated value based on the total amount of radioactive material being launched. This value is used in defining the

level of review and approval required for launch.

2. Earth Return Mission (also known as a Sample Return)—A subcategory of missions that would collect extraterrestrial materials from solar system bodies and return them to Earth.
3. NASA Senior Environmental Official—The Senior NASA Headquarters Official responsible for providing executive and functional leadership for environmental compliance. As of January 1, 2011, the SEO is the Assistant Administrator for Strategic Infrastructure.
4. Record of Environmental Consideration—A brief document that is used to describe a proposed action, identify the applicable categorical exclusion, and explain why further environmental analysis is not required.
5. Restricted Earth Return—A subcategory of Earth Return Missions which requires additional measures to ensure that any potential indigenous life form would be contained so that it could not impact humans or Earth's environment.
6. Space Flight Projects/Programs—Those NASA actions that develop products intended for use in space and/or that support ground and space operations for products in space.
7. Unrestricted Earth Return—NASA Procedural Requirements define this as a subcategory of Earth Return Missions that would collect extraterrestrial materials from solar system bodies (deemed by scientific opinion to have no indigenous life forms) and return those samples to Earth. No planetary protection measures are required for the inbound (return to Earth) phase of the mission.

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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Subpart 1221.2—The Congressional Space Medal of Honor

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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 and 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.

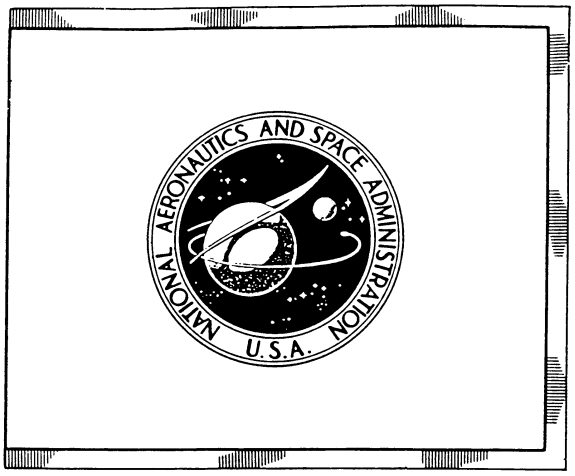
§ 1221.105 Establishment of NASA Program Identifiers.

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

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.
1230.101 Scope.
1230.102 Applicability.
1230.103 Policy.

AUTHORITY: 5 U.S.C. 301; 45 CFR part 46.

SOURCE: 79 FR 76059, Dec. 16, 2014, unless otherwise noted.

§ 1230.101 Scope.

This Part establishes general policy for the protection of human subjects, which is of primary importance in the conduct of any human research, as specified under 5 U.S.C. 301; 45 CFR part 46, subpart A.

§ 1230.102 Applicability.

This Part applies to NASA Headquarters and NASA Centers, including Component Facilities, and Technical and Service Support Centers for all research involving humans subjects conducted, supported, or otherwise subject to regulations by any Federal department or agency which takes appropriate administrative action to make the policy applicable to such research.

§ 1230.103 Policy.

It is the National Aeronautics and Space Administration's (NASA) policy to comply with 45 CFR part 46, subpart A, Protection of Human Subjects, which applies to all research conducted involving human subjects. To implement the provisions of 45 part 46, subpart A, NASA promulgated the following internal policies and requirements:

(a) NPD 7100.8, Protection of Human Research Subjects, describes the Agency's policy for human research conducted or supported, whether on the ground, in aircraft, or in space. NPD 7100.8 can be accessed at *http://nodis3.gsfc.nasa.gov/;* and

(b) NPR 7100.1, Protection of Human Research Subjects, describes the requirements for the Agency to conduct or support research involving human subjects. NPR 7100.1 can be accessed at *http://nodis3.gsfc.nasa.gov/.*

PART 1232—CARE AND USE OF ANIMALS IN THE CONDUCT OF NASA ACTIVITIES

Sec.
1232.100 Scope.
1232.101 Applicability.
1232.102 Policy.

AUTHORITY: 51 U.S.C. 20102, 51 U.S.C. 20113; Pub. L. 89–544, as amended; 7 U.S.C. 2131; 39 U.S.C. 3001; and Pub. L. 99–158, Sec. 495.

SOURCE: 78 FR 76059, Dec. 16, 2014, unless otherwise noted.

§ 1232.100 Scope.

This part establishes general policy for the care and use of vertebrate animals in the conduct of NASA activities.

§ 1232.101 Applicability.

This part applies to NASA Headquarters and NASA Centers, including Component Facilities, and Technical and Service Support Centers and will be followed in all activities using animal subjects that are supported by NASA and conducted in NASA facilities, aircraft, or spacecraft, or activities, using animal subject 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 which are included within the scope of this part.

§ 1232.102 Policy.

It is the National Aeronautics and Space Administration's (NASA) policy to comply with the Animal Welfare Act of 1966 (Pub. L. 89–544) which requires that minimum standards of care and treatment be provided for certain animals bred for use in research. To implement the provisions of this Act, NASA promulgated the following internal policies and requirements:

(a) NASA Policy Directive (NPD) 8910.1, Care and Use of Animals, describes the policy and responsibilities for conducting activities involving

vertebrate animals. NPD 8910.1 is accessible at *http://nodis3.gsfc.nasa.gov/*; and

(b) NASA Procedural Requirements (NPR) 8910.1, Care and Use of Animals, delineates the responsibilities and implements requirements for the Agency's use of animals in research, testing, teaching, and hardware development activities. NPR 8910.1 is accessible is access at *http://nodis3.gsfc.nasa.gov/*.

PART 1240—INVENTIONS AND CONTRIBUTIONS

Subpart 1—Awards for Scientific and Technical Contributions

Sec.
1240.100 Purpose.
1240.101 Scope.
1240.102 Definitions
1240.103 Criteria.
1240.104 Applications for awards.
1240.105 Special initial awards—NASA and NASA contractor employees.
1240.106 Review and evaluation of contribution.
1240.107 Notification by the Board.
1240.108 Reconsideration.
1240.109 Hearing procedure.
1240.110 Recommendation to, and action by, the Administrator.
1240.111 Release.
1240.112 Presentation of awards.
1240.113 Financial accounting.
1240.114 Delegation of authority.

AUTHORITY: Section 20136 of the National Aeronautics and Space Act (51 U.S.C. 20136), and the Federal Technology Transfer Act of 1986, sec. 12, 15 U.S.C. 3710b(1).

SOURCE: 67 FR 31120, May 9, 2002, 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 51 U.S.C. 20136, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986, section 12, 15 U.S.C. 3710b(1).

[77 FR 27366, May 10, 2012]

§ 1240.101 Scope.

This subpart applies to awards for 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, upon submission of an application for award to NASA, or upon the Administrator's own initiative, under 51 U.S.C. 20136.

[77 FR 27366, May 10, 2012]

§ 1240.102 Definitions.

As used in this subpart:

(a) *Administrator* means the Administrator of the National Aeronautics and Space Administration.

(b) *Board* means the NASA Inventions and Contributions Board.

(c) *Chairperson* means the Chairperson of the NASA Inventions and Contributions Board.

(d) *Commercial quality* refers to computer software that is not in an experimental or beta phase of development, that performs in accordance with its specifications, and includes documentation describing the software's form and function.

(e) *Contract* means any contract, agreement, understanding, or other arrangement with NASA or another Government Agency on NASA's behalf, including any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(f) *Contractor* means the party who has undertaken to perform work under a contract or subcontract.

(g) *Innovation* means a mathematical, engineering or scientific concept, idea, design, process, or product.

(h) *Innovator* means any person listed as a contributor, inventor, or author of an innovation.

(i) *Invention* includes any act, method, process, machine, manufacture, design, or composition of 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 or any foreign country.

(j) *Qualified User* means any person that has legally acquired computer

software and has the right to use it for a legal purpose.

(k) *Verified* means passing rigorous testing to ascertain whether the functionality claimed in the innovation's documentation is realized.

[67 FR 31120, May 9, 2002, as amended at 77 FR 27366, May 10, 2012]

§ 1240.103 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.

§ 1240.104 Applications for awards.

(a) *Eligibility*. Applications for award may be submitted by any person including any individual, partnership, corporation, association, institution, or other entity. An application for an award under this section is separate from application for an award under § 1240.105 and may be submitted whether or not the contribution is also eligible for an award under § 1240.105.

(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 20546–0001, 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, using electronic media, 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.

[67 FR 31120, May 9, 2002, as amended at 77 FR 27366, May 10, 2012]

§ 1240.105 Special initial awards—NASA and NASA contractor employees.

(a) *Patent Application Awards.* (1) When the Board receives written notice, in the manner prescribed by the Board, from the Agency Counsel for Intellectual Property or the Patent or Intellectual Property Counsel at a NASA Center that an invention made by an employee of NASA or a NASA contractor and reported to NASA in the manner prescribed by the Board is eligible for a patent application award, the Board may recommend to the Administrator or a designee that an award be made, including a specific recommended amount and distribution thereof for any multiple inventors, so long as the following eligibility conditions have been met:

(i) A nonprovisional U.S. patent application has been filed covering the invention and NASA has either an ownership interest in the invention or an irrevocable, royalty-free, license to practice the invention, or have the invention practiced for or on its behalf, throughout the world, or the invention has been assigned by NASA to a contractor under 35 U.S.C. 202(e); or

(ii) A continuation-in-part or divisional patent has been issued based on a patent application that is eligible for an award under paragraph (a)(1)(i) of this section.

(2) No additional award will be given for a continuation patent application where an award was authorized for the parent application and the parent application will be or has been abandoned. In addition, awards will not be granted for provisional applications under 35 U.S.C. 111(b) or reissue applications under 35 U.S.C. 251.

(b) *Software Release Awards.* (1) When the Board receives written notice, in the manner prescribed by the procedures of the Board, that a NASA Center has approved the initial (first) release to a qualified user of a software package based on a software innovation made by an employee of NASA or a NASA contractor and reported to NASA in the manner prescribed by the procedures of the Board, the Board may recommend to the Administrator or designee that an award be made, including a specific amount and distribution thereof for any multiple innovators, so long as the following conditions have been met:

(i) NASA has either an ownership interest in the software or an irrevocable, royalty-free, license to reproduce, prepare derivative works, distribute, perform and display the software, throughout the world for governmental purposes;

(ii) The software is of commercial quality as defined in § 1240.102; and

(iii) The software has been verified to perform the functions claimed in its documentation on the platform for which it was designed without harm to the systems or data contained within.

(2) Software that is the subject of a software release award is not eligible to receive a Tech Brief award based upon the publication of an announcement of availability in ''NASA Tech Briefs.''

(3) Software release awards for modifications made to software for which the innovators have already received an initial software release award will be at the discretion of the Administrator or his designee, upon recommendation by the Board.

(c) *Tech Briefs Awards.* When the Board receives written notice, in the manner and format prescribed by the procedures of the Board, that a NASA Center has approved for publication a NASA Tech Brief based on an innovation made by an employee of NASA or a NASA contractor and reported to NASA in the manner and form prescribed by the procedures of the Board, the Board may recommend to the Administrator or designee that an award be made, including a specific amount and distribution thereof for any multiple innovators.

(d) When a Patent Application Award, a Software Release Award, and a Tech Brief Award have been authorized for the same contribution, the awards will be cumulative.

[77 FR 27366, May 10, 2012]

§ 1240.106 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 § 1240.104(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 $500.

§ 1240.107 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.

§ 1240.108 Reconsideration.

(a) With respect to each completed application, 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.

[67 FR 31120, May 9, 2002, as amended at 77 FR 27367, May 10, 2012]

§ 1240.109 Hearing procedure.

(a) An 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 § 1240.108(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 § 1240.104(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.

§ 1240.110 Recommendation to, and action by, the Administrator.

(a) 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.

(b) The granting, denying or modification of any Board recommended award under this subpart will be at the sole discretion of the Administrator or his designee, who will determine the final terms and conditions of each award after consideration of the criteria in § 1240.103.

(c) In addition, the Board may recommend, and the Administrator or his designee may grant, non-monetary awards under other applicable laws and regulations.

[67 FR 31120, May 9, 2002, as amended at 77 FR 27367, May 10, 2012]

§ 1240.111 Release

Under subsection 20136(c) of the National Aeronautics and Space Act, 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.

[77 FR 27367, May 10, 2012]

§ 1240.112 Presentation of awards.

(a) Written acknowledgments to employees of NASA receiving awards will be provided by the appropriate Official-in-Charge at the Headquarters Office, by the Director of the cognizant NASA Center, or by a designee.

(b) Written acknowledgments to employees of NASA contractors receiving awards will be forwarded to contractor officials for suitable presentation.

(c) Monetary awards will be paid by check or electronic funds transfer.

[77 FR 27367, May 10, 2012]

§ 1240.113 Financial accounting.

NASA shall provide for appropriate database and accounting system(s) to ensure that award payments are recorded and disbursed in an orderly fashion and in the proper amounts to proper awardees.

[77 FR 27367, May 10, 2012]

§ 1240.114 Delegation of authority.

(a) The Chairperson, Inventions and Contributions Board, is delegated authority to approve and execute grants of awards for significant scientific or technical contributions not exceeding $2,000 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 approve and execute grants of awards not exceeding $2,000 per awardee, upon the notification that:

(1) A Patent Application Award has been recommended by the Board pursuant to § 1240.105(a);

(2) A Software Release Award has been recommended by the Board pursuant to § 1240.105(b); or

(3) A Tech Briefs Award has been recommended by the Board pursuant to § 1240.105(c).

[77 FR 27367, May 10, 2012]

PART 1241 [RESERVED]

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Subpart 1—Patent Waiver Regulations

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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 Government 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—Claims for Patent and Copyright Infringement

AUTHORITY: 51 U.S.C. 20112–20113; 22 U.S.C. 2356; 35 U.S.C. 181–188 and 286; and 28 U.S.C. 1498.

SOURCE: 77 FR 14687, Mar. 13, 2012, unless otherwise noted.

§ 1245.200 Purpose.

The purpose of this subpart is to set forth policies and procedures for the

filing and disposition of claims of infringement of privately owned rights in patented inventions or copyrighted works asserted against NASA.

§ 1245.201 Objectives.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against NASA, all necessary steps shall be taken to investigate and to administratively settle, deny, or otherwise dispose of such claim prior to suit against the United States. The General Counsel, or designee, is authorized to investigate, settle, deny, or otherwise dispose of all claims of patent and copyright infringement, pursuant to the above-cited statutory authority.

§ 1245.202 Contents of communication initiating claim.

(a) *Requirements for claim.* A patent or copyright infringement claim for compensation, asserted against the United States as represented by NASA under any of the applicable statutes cited above, must be actually communicated to and received by an organization, office, or within a NASA Center. Claims must be in writing and must include the following:

(1) An allegation of infringement.

(2) A request for compensation, either expressed or implied.

(3) A citation to the patent(s) or copyright(s) alleged to be infringed.

(4) In the case of a patent infringement claim, a sufficient designation to permit identification of the accused subject matter (e.g. article(s) or process(es)) alleged to infringe the patent(s), giving the commercial designation, if known to the claimant, or, in the case of a copyright infringement claim, the accused subject matter (e.g. act(s) or work(s)) alleged to infringe the copyright.

(5) In the case of a patent infringement claim, a designation of at least one claim of each patent alleged to be infringed or, in the case of a copyright infringement claim, a copy of each work alleged to be infringed.

(6) As an alternative to paragraphs (a)(4) and (5) of this section, certification that the claimant has made a bona fide attempt to determine the accused subject matter, which is alleged to infringe the patent(s), or the accused subject matter alleged to infringe the copyright(s), but was unable to do so, giving reasons and stating a reasonable basis for the claimant's belief that the patent(s) or copyright(s) is being infringed.

(b) *Additional information for patent infringement claims.* In addition to the information listed in paragraph (a) of this section, the following material and information generally are necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit rapid processing and resolution of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent(s) alleged to be infringed.

(2) Identification of all procurements known to the claimants that involve the accused item(s) or process(es), including the identity of the vendor(s) or contractor(s) and the Government acquisition activity or activities.

(3) A detailed identification and description of the accused article(s) or process(es) used or acquired by the Government, particularly where the article(s) or process(es) relate to a component(s) or subcomponent(s) of an item acquired, and an element-by-element comparison of representative claim(s) with the accused article(s) or process(es). If available, the identification and description should include documentation and drawings to illustrate the accused article(s) or process(es) in sufficient detail to enable determining whether the claim(s) of the asserted patent(s) read on the accused article(s) or process(es).

(4) Names and addresses of all past and present licensees under the patent(s) and copies of all license agreements and releases involving the patent(s). In addition, an identification of all assignees of the patent(s).

(5) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the status or ultimate disposition of each.

(6) A brief description of all litigation involving the patent(s) which was

initiated at any time prior to the claim being filed and their present status. This includes any defenses or counterclaims made and positions maintained by opposing parties regarding invalidity of the patent(s).

(7) A description of Government employment or military service, if any, by the inventor(s) or patent owner(s) including a statement from the inventor(s) or patent owner(s) certifying whether the invention claimed in the patents was conceived or reduced to practice, in part or in whole, during Government employment and whether such inventor(s) or owner(s) occupied any position from which such inventor(s) or owner(s) was capable of ordering, influencing, or inducing use of the invention by the Government.

(8) A list of all contract(s) between the Government and inventor(s), patent owner(s), or anyone in privity with the patent owner(s), under which work relating to the patented subject matter was performed.

(9) Evidence of title to the asserted patent(s) or other right to make the claim.

(10) A copy of the United States Patent and Trademark Office (USPTO) file history of each patent, if it is available to the claimant. Indicate whether the patent has been the subject of any interference proceedings, certification of correction request, reexamination, or reissue proceedings at the USPTO, or lapsed for failure to pay any maintenance fee. In addition, the status of all corresponding foreign patents and patent applications and full copies of the same.

(11) Pertinent prior art known to the claimant not contained in the USPTO file, for example, publications and foreign prior art. In addition to the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused article(s) or process(es) or to a specific acquisition (e.g. identified contract(s)), it may speed disposition of the claim. Claimants are also encouraged to provide information on any ancillary matters that may have a bearing on validity or infringement.

(c) *Denial for refusal to provide information*. In the course of investigating a claim, it may become necessary for NASA to request information in the control and custody of the claimant that is relevant to the disposition of the claim. Failure of the claimant to respond to a request for such information shall be sufficient reason alone for denying a claim.

§ 1245.203 Incomplete notice of infringement.

(a) If a communication alleging patent infringement or copyright infringement is received that does not meet the requirements set forth in § 1245.202(a), the sender shall be advised in writing by the Agency Counsel for Intellectual Property:

(1) That the claim for infringement has not been satisfactorily presented; and

(2) Of the elements necessary to establish a claim.

(b) A communication, in which no infringement is alleged in accordance with § 1245.202(a), such as a mere proffer of a license, shall not be considered a claim for infringement.

§ 1245.204 Indirect notice of infringement.

A communication by a patent or copyright owner to addressees other than those specified in § 1245.202(a), such as NASA contractors, including contractors operating Government-owned facilities, alleging that acts of infringement have occurred in the performance of a Government contract, grant, or other arrangement, shall not be considered a claim within the meaning of § 1245.202(a) until such communication meets the requirements specified therein.

§ 1245.205 Processing of administrative claims.

(a) *Filing and forwarding of claims*. All communications regarding claims should be addressed to: Agency Counsel for Intellectual Property, Office of the General Counsel, National Aeronautics and Space Administration, Washington, DC 20546–0001. If any communication relating to a claim or possible claim of patent or copyright infringement is received by an agency, organization, office, or field installation within NASA, it shall be forwarded to

the Agency Counsel for Intellectual Property.

(b) *Disposition and notification.* The General Counsel, or designee, shall investigate and administratively settle, deny, or otherwise dispose of each claim. When a claim is denied, the Agency shall so notify the claimant or the claimant's authorized representative and provide the claimant with the reasons for denying the claim. Disclosure of information shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

(c) *Termination of claims.* If, while an administrative claim for patent or copyright infringement is pending against NASA, the claimant brings suit for patent or copyright infringement against the United States in the Court of Federal Claims based on the same facts or transactions as the administrative claim, the administrative claim shall thereupon be automatically dismissed, with no further action being required of NASA.

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.

Subparts 4–5 [Reserved]

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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1250.112 Relationship with other officials.
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 types of Federal financial assistance listed in appendix A to this part. The fact that a type of Federal assistance is not listed in appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance 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 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 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, (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 types of Federal financial assistance listed in appendix A, or (6) advances, V-loans, and other financial assistance made incident to NASA procurements not covered in the types of Federal financial assistance listed in appendix A.

[30 FR 301, Jan. 9, 1965, as amended at 68 FR 51350, Aug. 26, 2003]

§ 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.

(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 or activity* and *program* mean all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

(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, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

(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; 68 FR 51350, Aug. 26, 2003]

§ 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 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; 68 FR 51350, Aug. 26, 2003]

§ 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 types of Federal financial assistance 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; 68 FR 51350, Aug. 26, 2003]

§ 1250.103–4 Illustrative applications.

(a) In training grant services 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.

(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; 68 FR 51350, Aug. 26, 2003]

§ 1250.103–5 Special benefits.

An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits limited by Federal law to individuals of a particular race, color, or national origin different from his.

[30 FR 301, Jan. 9, 1965, as amended at 68 FR 51350, Aug. 26, 2003]

§ 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 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.

(d) *Assurances for construction of facilities.* 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.

(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 with 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 statute 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; 68 FR 51350, Aug. 26, 2003]

§ 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 in 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 for 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.

[30 FR 301, Jan. 9, 1965, as amended at 68 FR 51350, Aug. 26, 2003]

§ 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 Federal statutes, authorities, or other means by which Federal financial assistance is extended and 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; 68 FR 51350, Aug. 26, 2003]

§ 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, to which this regulation applies, 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 to which this regulation applies will thereafter be extended 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; 68 FR 51350, Aug. 26, 2003]

§ 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 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; 68 FR 51350, Aug. 26, 2003]

§ 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 such assistance.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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.

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k) (1), (2), or (3) of this section.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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 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 or activity;

(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 or activity receiving 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 aid, benefits, or services 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 or activity 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 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 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) *Aid, benefits, or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute of Executive order to handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 1251.104 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Administrator, that the program or activity 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.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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 or activity but who were participants in the program or activity when such discrimination occurred; or

(ii) With respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred; or

(iii) With respect to handicapped persons presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

(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.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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 or 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.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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 or activities 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 apprenticeships.

(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 those that are social or recreational; 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 apprenticeships.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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 or activity.

(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 programor activity, factors to be considered include:

(1) The overall size of the recipient's program or activity 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.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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—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) *Accessibility*. A recipient shall operate each program or activity to which his part applies so that when each part is viewed in its entirety it 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 serve 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 accessibility under paragraph (a) of this

section 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.

[51 FR 26862, July 28, 1986, as amended at 68 FR 51351, Aug. 26, 2003]

§ 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 OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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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 or 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.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

§ 1252.102 To what programs or activities do these regulations apply?

(a) These regulations apply to each NASA recipient and to each program or activity operated by the recipient which receives 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.*).

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

§ 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.

(n) *Program or activity* means all of the operations of any entity described in paragraphs (n)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (n)(1), (2), or (3) of this section.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51351, Aug. 26, 2003]

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 or activity 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 or activity, notwithstanding the provision of § 1252.10.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

Subpart 1252.3—Responsibilities of Recipients

§ 1252.300 General responsibilities of recipients.

Each NASA recipient must ensure that its programs or activities comply with these regulations.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

§ 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 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.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

§ 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 or 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 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.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

§ 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 Federal financial assistance.

[50 FR 13311, Apr. 4, 1985, as amended at 68 FR 51352, Aug. 26, 2003]

§ 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 1253—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52876, Aug. 30, 2000, unless otherwise noted.

Subpart A—Introduction

§ 1253.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

§ 1253.105 Definitions.

As used in these Title IX regulations, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means Associate Administrator for Equal Opportunity Programs.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or

extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth at §§ 1253.100 through 1253.605.

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972,

20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§ 1253.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action*. If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action*. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation*. Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and nonacademic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials*. Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 1253.115 Assurance required.

(a) *General*. Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 1253.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation*. (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such 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 to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during

which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 1253.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 1253.205 through 1253.235(a).

§ 1253.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ 1253.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 1253.135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt

and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§ 1253.140 Dissemination of policy.

(a) *Notification of policy*. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 1253.300 through 1253.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 1253.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications*. (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution*. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ 1253.200 Application.

Except as provided in §§ 1253.205 through 1253.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ 1253.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption*. These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims*. An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict

with a specific tenet of the religious organization.

§ 1253.210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ 1253.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 1253.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ 1253.225 and 1253.230, and §§ 1253.300 through 1253.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 1253.300 through 1253.310.* Except as provided in paragraphs (d) and (e) of this section, §§ 1253.300 through 1253.310 apply to each recipient. A recipient to which §§ 1253.300 through 1253.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 1253.300 through 1253.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 1253.300 through 1253.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§ 1253.300 through 1253.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ 1253.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ 1253.300 through 1253.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 1253.300 through 1253.310.

§ 1253.230 Transition plans.

(a) *Submission of plans.* An institution to which § 1253.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the

plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination*. No policy or practice of a recipient to which § 1253.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 1253.300 through 1253.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion*. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 1253.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 1253.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity* or *program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a ''program or activity'' subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 1253.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 1253.300 through §§ 1253.310 apply, except as provided in §§ 1253.225 and §§ 1253.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1253.300 through 1253.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests

or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1253.300 through 1253.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 1253.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss'' or ''Mrs.'' A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 1253.305 Preference in admission.

A recipient to which §§ 1253.300 through 1253.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 1253.300 through 1253.310.

§ 1253.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 1253.300 through 1253.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 1253.110(a), and may choose to undertake such efforts as affirmative action pursuant to § 1253.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 1253.300 through 1253.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 1253.300 through 1253.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 1253.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 1253.400 through 1253.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 1253.300 through 1253.310 do not apply, or an entity, not a recipient, to which §§ 1253.300 through 1253.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 1253.400 through 1253.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 1253.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ 1253.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 1253.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 1253.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 1253.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one

sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 1253.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 1253.450.

§ 1253.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 1253.500 through 1253.550.

§ 1253.440 Health and insurance benefits and services.

Subject to § 1253.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 1253.500 through 1253.550 if it were provided to employees of the recipient.

This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 1253.445 Marital or parental status.

(a) *Status generally*. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions*. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 1253.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ 1253.450 Athletics.

(a) *General*. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams*. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity*. (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

§ 1253.455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 1253.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 1253.500 through 1253.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§ 1253.500 through 1253.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 1253.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 1253.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 1253.500 through 1253.550.

§ 1253.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§ 1253.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 1253.550.

§ 1253.525 Fringe benefits.

(a) *''Fringe benefits'' defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 1253.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 1253.530 Marital or parental status.

(a) *General*. A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy*. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability*. Subject to § 1253.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave*. In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 1253.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements*. The obligation to comply with §§ 1253.500 through 1253.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits*. A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ 1253.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 1253.545 Pre-employment inquiries.

(a) *Marital status*. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss'' or ''Mrs.''

(b) *Sex*. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 1253.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 1253.500 through 1253.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action

is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 1253.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 1253.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 14 CFR 1250.105 through 1250.110.

[65 FR 52877, Aug. 30, 2000]

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 [RESERVED]

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 Administrator 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 against the debtor. Ordinarily, referrals should be made within 1 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 filing 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 organization 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

Sec.

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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

Sec.

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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 1266—CROSS-WAIVER OF LIABILITY

Sec.
1266.100 Purpose.
1266.101 Scope.
1266.102 Cross-waiver of liability for agreements for activities related to the International Space Station.
1266.103 [Reserved]
1266.104 Cross-waiver of liability for launch agreements for science or space exploration activities unrelated to the International Space Station.

AUTHORITY: 42 U.S.C. 2458c and 42 U.S.C. 2473 (c)(1), (c)(5) and (c)(6).

SOURCE: 73 FR 10148, Feb. 26, 2008, unless otherwise noted.

§ 1266.100 Purpose.

The purpose of this Part is to ensure that consistent cross-waivers of liability are included in NASA agreements for activities related to the ISS and for NASA's science or space exploration activities unrelated to the ISS that involve a launch.

§ 1266.101 Scope.

The provisions at § 1266.102 are intended to implement the cross-waiver requirement in Article 16 of the intergovernmental agreement entitled, ''Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA).'' Article 16 establishes a cross-waiver of liability for use by the Partner States and their related entities and requires that this reciprocal waiver of claims be extended to contractually or otherwise-related entities of NASA by requiring those entities to make similar waivers of liability. Thus, NASA is required to include IGA-based cross-waivers in agreements for

ISS activities that fall within the scope of ''Protected Space Operations,'' as defined in § 1266.102. The provisions of § 1266.102 provide the regulatory basis for cross-waiver clauses to be incorporated into NASA agreements for activities that implement the IGA and the memoranda of understanding between the United States and its respective international partners. The provisions of § 1266.104 provide the regulatory basis for cross-waiver clauses to be incorporated into NASA launch agreements for science or space exploration activities unrelated to the ISS.

§ 1266.102 Cross-waiver of liability for agreements for activities related to the International Space Station.

(a) The objective of this section is to implement NASA's responsibility to flow down the cross-waiver of liability in Article 16 of the IGA to its related entities in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The IGA declares the Partner States' intention that the cross-waiver of liability be broadly construed to achieve this objective.

(b) For the purposes of this section:

(1) The term ''Party'' means a party to a NASA agreement involving activities in connection with the ISS.

(2)(i) The term ''related entity'' means:

(A) A contractor or subcontractor of a Party or a Partner State at any tier;

(B) A user or customer of a Party or a Partner State at any tier; or

(C) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.

(ii) The terms ''contractor'' and ''subcontractor'' include suppliers of any kind.

(iii) The term ''related entity'' may also apply to a State, or an agency or institution of a State, having the same relationship to a Partner State as described in paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (b)(6) of this section.

(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 ISS.

(6) The term ''Protected Space Operations'' means all launch or transfer vehicle activities, ISS activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the IGA, MOUs concluded pursuant to the IGA, 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, the ISS, payloads, or instruments, as well as related support equipment and facilities and services; and

(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 ISS, as provided for in Article 14 of the IGA. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from the ISS to develop further a payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(7) The term ''transfer vehicle'' means any vehicle that operates in space and transfers payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A transfer vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(8) The term ''Partner State'' includes each Contracting Party for

which the IGA has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It 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.

(c)(1) Cross-waiver of liability: 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, against:

(i) Another Party;

(ii) A Partner State other than the United States of America;

(iii) A related entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this section; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(2) In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph (c)(1) of this section, to its related entities by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section; and

(ii) Require that their related entities 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 of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, 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 (except when a subrogee is a Party to the agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damage resulting from a failure of a Party to extend the cross-waiver of liability to its related entities, pursuant to paragraph (c)(2) of this section; or

(vi) Claims by a Party arising out of or relating to another Party's failure to perform its obligations under the agreement.

(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 49 U.S.C. Subtitle IX, Chapter. 701 is applicable.

§ 1266.103 [Reserved]

§ 1266.104 Cross-waiver of liability for launch agreements for science or space exploration activities unrelated to the International Space Station.

(a) The purpose of this section is to implement a cross-waiver of liability between the parties to agreements for NASA's science or space exploration activities that are not related to the International Space Station (ISS) but involve a launch. It is intended that the cross-waiver of liability be broadly construed to achieve this objective.

(b) For purposes of this section:

(1) The term ''Party'' means a party to a NASA agreement for science or

space exploration activities unrelated to the ISS that involve a launch.

(2) (i) The term ''related entity'' means:

(A) A contractor or subcontractor of a Party at any tier;

(B) A user or customer of a Party at any tier; or

(C) A contractor or subcontractor of a user or customer of a Party at any tier.

(ii) The terms ''contractor'' and ''subcontractor'' include suppliers of any kind.

(iii) The term ''related entity'' may also apply to a State or an agency or institution of a State, having the same relationship to a Party as described in paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section, or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (b)(6) of this section.

(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.

(6) The term ''Protected Space Operations'' means all launch or transfer vehicle activities and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an agreement for launch services. 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 launch or transfer vehicles, payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. The term ''Protected Space Operations'' excludes activities on Earth that are conducted on return from space to develop further a payload's product or process for use other than for the activities within the scope of an agreement for launch services.

(7) The term ''transfer vehicle'' means any vehicle that operates in space and transfers payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A transfer vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c)(1) Cross-waiver of liability: 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, against:

(i) Another Party;

(ii) A party to another NASA agreement that includes flight on the same launch vehicle;

(iii) A related entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this section; or

(iv) The employees of any of the entities identified in paragraphs (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:

(i) Waive all claims against the entities or persons identified in paragraphs

(c)(1)(i) through (c)(1)(iv) of this section; and

(ii) Require that their related entities 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 of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, 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 (except when a subrogee is a Party to the agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damages resulting from a failure of a Party to extend the cross-waiver of liability to its related entities, pursuant to paragraph (c)(2) of this section; or

(vi) Claims by a Party arising out of or relating to another Party's failure to perform its obligations under the agreement.

(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 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

PART 1271—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

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1271.100 Conditions on use of funds.
1271.105 Definitions.
1271.110 Certification and disclosure.

Subpart B—Activities by Own Employees

1271.200 Agency and legislative liaison.
1271.205 Professional and technical services.
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Subpart C—Activities by Other Than Own Employees

1271.300 Professional and technical services.

Subpart D—Penalties and Enforcement

1271.400 Penalties.
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1271.410 Enforcement.

Subpart E—Exemptions

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1271.600 Semi-annual compilation.
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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.*)

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

SOURCE: 55 FR 6737, 6748, Feb. 26, 1990, unless otherwise noted.

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	**13. Type of Payment** *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
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 [RESERVED]

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APPENDIX TO PART 1274—LISTING OF EXHIBITS

AUTHORITY: 31 U.S.C. 6301 to 6308; 51 U.S.C. 20102, *et seq*.

SOURCE: 67 FR 45790, July 10, 2002, unless otherwise noted.

Subpart 1274.1—General

§ 1274.101 Purpose.

The following policy guidelines establish uniform requirements for NASA cooperative agreements awarded to commercial firms.

§ 1274.102 Scope.

(a) The business relationship between NASA and the recipient of a cooperative agreement differs from the relationship that exists between NASA and the recipient of a grant. Under the auspices of a grant, there is very little involvement and interaction between NASA and the grantee (other than a few administrative, funding, and reporting requirements, or in some cases matching of funds). Under a cooperative agreement, because of its substantial involvement, NASA assumes a higher degree of responsibility for the technical performance outcomes and associated financial costs of research activities. In some cooperative agreement projects, NASA may be required to indemnify the recipient (to the extent authorized by Congress). While the principal purpose of NASA's involvement and commitment of resources is to stimulate or support research activity, a major incentive for involvement by commercial firms (particularly where costs are shared) is the profit potential from marketable products expected to result from the cooperative agreement project.

(b) Cooperative agreements (in areas or research relevant to NASA's mission) 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.

(c) Projects that normally result in a cooperative agreement award to a commercial entity are projects that:

(1) Are not intended for the direct benefit of NASA;

(2) Are expected to benefit the general public;

(3) Require substantial cost sharing; and

(4) Have commercial applications and profit generating potential.

(d) The principal purpose of cooperative agreements is to stimulate research to benefit the general public through the criteria stated in paragraphs (a) through (c) of this section. Since all research activities must be within NASA's authorized expenditure of appropriations, there may be instances where NASA can derive incidental use or benefits while preserving the principal purpose of the cooperative agreement. However, a careful balance must be established and maintained in the cooperative agreement's technical and business objectives, so that the principal purpose of the project serves to benefit the general public (i.e., technology will transfer from the Government to the public and the commercial partner expects a marketable product to result). If a cooperative agreement is awarded when the proper award instrument should have been a contract (because the primary purpose of the award is for the direct benefit of NASA), the cooperative agreement award can be protested. Thus, before pursuing any incidental benefits that materialize under a cooperative agreement, NASA Centers should ensure that the advice of legal counsel is obtained.

§ 1274.103 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Agreement officer. A Government employee (usually a Contracting Officer or Grant Officer) who has been delegated the authority to negotiate, award, or administer the cooperative agreement. Most often Contracting Officers are delegated this authority for

the more complex cooperative agreement projects.

Assistant Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The cash invested in a given program or project by the Federal Government and/or recipient. The recipient's cash contributions may include money contributed by third parties.

Closeout. 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.

Commercial item. The definition in FAR 2.101 is applicable.

Consortium. 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 that normally compete for commercial or Government business or may be made up of firms that perform complementary functions in a given industry.

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 Part 1274 covers only cooperative agreements with commercial firms where resource sharing is involved. Cooperative agreements with other types of organizations are covered by 14 CFR Part 1260.

Cooperative agreement notice (CAN). Publication on Federal Business Opportunities (FedBizOpps) or NASA Acquisition Internet Service (NAIS) websites advertising the solicitation of competitive proposals for the award of a cooperative agreement.

Cost sharing. Arrangement whereby the Government and the recipient share the funding requirements of a program or project at an agreed upon ratio or percentage (normally 50/50). Normally, the Government's payment of its share of the costs is contingent upon the accomplishment of tangible milestones (preferred method). Any payment arrangement that is based on a method other than the accomplishment of tangible milestones (e.g., a reimbursable arrangement where NASA pays a share of incurred costs, regardless of the accomplishment of tangible milestones) must be approved through the deviation process discussed in 1274.106.

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.

General purpose equipment. Equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

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. In most cases, Government furnished equipment will be counted as part of the Government's in-kind or non-cash contributions to the cooperative agreement for the purpose of determining the share ratio.

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.

Non-cash or in-kind contributions. May be in the form of personnel resources (where cost accounting methods allow accumulation of such costs), 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. Costs incurred by NASA to provide the services of one of

its support contractors to perform part of NASA's requirements under a cooperative agreement shall be included as part of NASA's cost share, and will be counted as an in-kind contribution to the cooperative agreement.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, including sole proprietor, partnership, corporation, or a consortium of business entities.

Research misconduct is defined in 14 CFR 1275.101. NASA policies and procedures regarding Research misconduct are set out in 14 CFR part 1275, ''Investigation of Research Misconduct.''

Resource contributions. The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

Subcontracting dollar threshold. The dollar amount of the cooperative agreement subject to the small business subcontracting policies (includes small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions). For cooperative agreements, the dollar threshold to which the small business subcontracting policies apply, is established by the total amount of NASA's cash contributions.

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.

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.

[67 FR 45790, July 10, 2002, as amended at 70 FR 28809, May 19, 2005]

§ 1274.104 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory 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 § 1274.106.

§ 1274.105 Review requirements.

(a) Once the decision is made by a Headquarters program office or Center procurement personnel, to pursue the Cooperative Agreement Notice (CAN) process, for which the total NASA resources to be expended equal or exceed $10 million (cash plus non-cash contributions), a notification shall immediately be provided to the Assistant Administrator for Procurement (Code HS). The notification(s) shall be forwarded by the cognizant Headquarters program office or the Center procurement office (as applicable). For any CAN where NASA's *cash* contributions are expected to equal or exceed $10 million, Headquarters program office or Center procurement personnel shall also notify the Assistant Administrator for Small and Disadvantaged Business Utilization (Code K). All such notifications, as described in paragraph (b) of this section, shall evidence concurrence by the cognizant Center Procurement Officer. These review requirements also apply where an unsolicited proposal is received from a commercial firm (or from a team of recipients where one of more team members is a commercial firm), and the planned award document is a cooperative agreement.

(b) The notification shall be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: *can@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 award(s);

(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;

(7) Tentative schedule for release of CAN and award of cooperative agreements;

(8) If the term of the cooperative agreement is anticipated to exceed 3 years and/or if the Government cash contribution is expected to exceed $20M, address anticipated changes, if any, to the provisions (see § 1274.207); and

(9) If the cooperative agreement is for programs/projects that provide aerospace products or capabilities, (e.g., provision of space and aeronautics systems, flight and ground systems, technologies and operations), a statement that the requirements of NASA Policy Directive (NPD) 7120.4 and NASA Policy Guidance (NPG) 7120.5 have been met. This affirmative statement will include a specific reference to the signed Program Commitment Agreement.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer and the Office of Small and Disadvantaged Business Utilization, within five (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.)).

(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.

(e) Before issuance, each field-generated CAN shall be approved by the installation director or designee, with the concurrence of the procurement officer. Each Headquarters generated CAN shall be approved by the cognizant Program Associate Administrator or designee, with concurrence of the Headquarters Offices of General Counsel (Code GK), External Relations (Code I), Safety & Mission Assurance (Code Q), and Procurement (Code HS).

§ 1274.106 Deviations.

(a) The Assistant Administrator for Procurement may grant exceptions for classes of, or individual cooperative agreements and deviations from the requirements of this Regulation when exceptions are not prohibited by statute.

(b) 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 regulation, 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 regulation, 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) 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 re quested previously, and, if so, circumstances of the previous request(s); and

(5) A copy of legal counsel's concurrence or comments.

§ 1274.107 Publication of requirements.

Cooperative agreements may result from recipient proposals submitted in response to the publication of a NASA Research Announcement (NRA), a Cooperative Agreement Notice (CAN), or other Broad Agency Announcement (BAA). BAAs, NRAs and CANs are normally promulgated through publicly accessible Government-wide announcements such as those published under the Federal Business Opportunities (FedBizOpps), and/or the NASA Acquisition Internet Service (NAIS). Prior to publicizing the CAN, see § 1274.105.

Subpart 1274.2—Pre-Award Requirements

§ 1274.201 Purpose.

This subpart provides pre-award guidance, prescribes forms and instructions, and addresses other pre-award matters.

§ 1274.202 Methods of award.

(a) *Competitive agreements*. Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible.

(b) *Awards using other than competitive procedures*. Solicitations for award of a Cooperative Agreement shall not be issued to, nor negotiations conducted with a single source unless—

(1) Use of such actions is documented in writing; and

(2) Concurrence and approvals are obtained. The dollar thresholds will be determined by the total value of the resources committed to the Cooperative Agreement (cash and quantifiable in-kind contributions).

§ 1274.203 Solicitations/cooperative agreement notices.

(a) Agreement officers should use every effort to issue draft pre-award cooperative agreement information. Any draft documentation released for comment shall contain all factors/subfactors. Draft documents should be as close to the final product as possible. Draft Cooperative Agreement Notices (CAN's) or Cooperative Agreements (CA) should include terms and conditions, special requirements and expected cash and non-cash (in-kind) contributions.

(1) Publication of draft documentation may serve to prevent unnecessary expenditure of resources and unproductive time that may be spent by NASA and potential recipients. Release of draft documentation also serves to assist NASA in refining program objectives and requirements, and maximizes the quality of research proposals submitted for formal evaluation and source selection.

(2) During the information gathering process, comments may be invited from potential recipients on all aspects of the draft documentation, including the requirements, schedules, proposal instructions and evaluation approaches. Potential recipients should be specifically requested to identify unnecessary or inefficient requirements. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the CA.

(3) Agreement officers should include in the award schedule adequate time for the process to include industry review and comments, and NASA's evaluation and disposition of comments received.

(4) When providing draft documents for comment, the draft CAN shall advise interested parties that any issued draft documentation shall not be considered as a solicitation for award, and that NASA is not requesting proposals in response to the draft publication.

(5) Whenever feasible, agreement officers should include a summary of the disposition of significant comments when issuing the final CAN and/or CA.

(b) The evaluation section of the CAN shall notify potential recipients of the relative importance of factors, and any subfactors or other criteria that will be evaluated during the selection process.

(c) For its research projects, NASA may publish the expected project goals

and objectives in terms of ''What'' the commercial recipient is expected to accomplish. The commercial recipient may be required to submit a proposed statement of work with its proposal stating ''How'' the recipient will accomplish the task(s). Depending on its importance to the success of the project, for some projects the recipient's statement of work may be included as an evaluation criterion for award. In these instances, the requirement for submission of the recipient's statement of work will be clearly identified as a subfactor or criterion that will be evaluated, and its relative weight or ranking in relation to other evaluation criteria shall be stated. In all cases, where the recipient submits a statement of work in response to NASA project objectives, NASA shall have final approval of the acceptability of the statement of work.

(d) Where performance-based milestone payments are planned, the potential recipient should be encouraged to suggest in its statement of work (which incorporates the project goals and objectives), or elsewhere in its proposal, terms and/or performance events upon which milestone payments can be negotiated.

(e) The CAN should provide a description and value for any quantifiable non-cash or in-kind Government resources (personnel, equipment, facilities, etc.), in addition to any cash funds that will be offered by the Government as part of its contributions to the cooperative agreement. As part of its proposal package, the recipient may also identify additional non-cash or in-kind resources it wishes NASA to contribute. The recipient shall verify the suitability of the requested resource(s) to the work to be performed under the cooperative agreement. Any additional verifiable and suitable non-cash or in-kind resources requested, shall be added to NASA's shared cost of performing the cooperative agreement, and may require increased cash or in-kind contributions from the recipient to meet its percentage of the cost share.

(f) To protect the integrity of the competitive process, upon release of the formal CAN the agreement officer shall direct that all personnel associated with the source selection refrain from communicating with prospective recipients and to refer all inquiries to the agreement officer or other authorized representative. The notification to potential recipients may be sent in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition. It is not intended that all communication with potential recipients be terminated. Agreement officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

§ 1274.204 Costs and payments.

(a) *Cost allowability*. (1) Cooperative agreements awarded to commercial firms are subject to the cost accounting standards and principles of 48 CFR Chapter 99, as implemented by FAR Parts 30 and 31.

(2) If the recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows:

(i) 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.''

(ii) 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.''

(iii) 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 nstitutions.''

(iv) 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.''

(3) A recipient's method for accounting for the expenditure of funds must be consistent with generally accepted accounting principles.

(b) *Cost sharing*. (1) Given the mutually beneficial nature of, in particular,

potential commercially marketable products expected to result from the research activities of the cooperative agreement, resource contributions are required from the recipient. The commercial recipient is expected to contribute at least 50 percent of the total resources necessary to accomplish the cooperative agreement effort. Recipient contributions may be cash, noncash (in-kind) or both. Acceptable noncash or in-kind resources include such items as equipment, facilities, labor, office space, etc. In determining the incentive to the recipient to share costs, agreement officers must consider a variety of factors. For example, while the future profitability of intellectual property may serve as an incentive for involvement of the commercial firm in the cooperative agreement, the actual or imputed value of such items as patent rights, data rights, trade secrets, etc., included in intellectual property is generally not considered a reliable source for computation of the recipient's contributions.

(2) In most cases these costs are not readily quantifiable. Thus, although the value of intellectual property rights should be factored into the incentive for the recipient to share at least 50 percent of costs, intellectual property rights do not serve as quantifiable amounts to determine the equitable dollar amounts of costs to be shared.

(3) As is expected from the commercial partner, the Government's cost share should reflect certain non-cash as well as cash contributions to the most practicable extent possible. Where quantifiable, NASA will include in the calculation of the Government's cost share, non-cash or in-kind contributions, which includes the value of equipment, personnel, and facilities. Costs incurred by NASA to provide the services of one or more support contractors to perform part of NASA's requirements under a cooperative agreement will be counted as part of NASA's in-kind contributions. This approach is also supported by the initiative to implement full cost accounting methods within the Federal Government.

(4) When other Government agencies act as partners along with NASA (e.g., Department of Defense or Federal Aviation Administration), the resources contributed by any Government agency shall be counted as part of the Government's total cost share under the cooperative agreement.

(5) For every cooperative agreement, there should be evidence of the recipient's strong commitment and self-interest in the success of the research project. A very strong indicator of a recipient's self-interest is the willingness to commit to a meaningful level of cost sharing (i.e., 50 percent). Before considering whether it is impracticable for the recipient to share at least 50% of the performance costs, agreement officers should also consider whether other factors exist that demonstrate the recipient's financial stake or self-interest in the success of the cooperative agreement.

(6) In cases where a contribution of less than 50 percent is anticipated from the commercial recipient, approval of the Assistant 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 percent is warranted.

(7) Once accepted for application to costs shared under the cooperative agreement, cash and in-kind contributions including Independent Research and Development (IR&D) costs, may not be included as contributions for any other federally assisted project or program.

(c) *Fixed funding.* (1) Cooperative agreements are funded by NASA through the disbursement of agreed upon fixed payment amounts to the recipient. NASA makes disbursement of funds to the recipient as ''Milestone payments'' discussed in paragraph (d) of this section. If the recipient achieves the final milestone, final payment is made, which completes NASA's financial responsibilities under the agreement.

(2) Fixed payments on a cooperative agreement are made by NASA based on the accomplishment by the recipient of predetermined tangible milestones. Any arrangement where payments are

made on a basis other than accomplished tangible milestones must be approved in accordance with the requirements of § 1274.106 Deviations.

(3) If the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding is limited to milestone payments already made plus NASA's share of costs incurred to meet commitments of the recipient, which had in the judgment of NASA become firm prior to the effective date of termination. In no event, however, shall the amount of NASA's share of these additional costs exceed the amount of the next scheduled milestone payment.

(d) *Milestone obligations and payments.* Agreement officers, technical officers, accounting and finance officials, and all other responsible NASA personnel shall ensure that funds for milestone payments are obligated, billed and expended in accordance with the guidance set forth by the NASA Financial Management Manual (FMM 9000).

(1) There must always be sufficient funds obligated to cover the next milestone payment. In addition, funds must be made available (but not necessarily obligated) to cover all milestone payments expected to be made during the current fiscal year of performance.

(2) Disbursement of funds to the recipient is based on the achievement of milestones or performance-related benchmarks. The milestone must represent the accomplishment of verifiable, significant event(s) and may not be based upon the mere passage of time or the performance of a particular level of effort. The Government technical officer must verify to and advise the agreement officer that each milestone has been achieved prior to authorizing the corresponding payment.

(3) The amount of funds to be disbursed by NASA in recognition of the achievement of milestones (''milestone payments'') shall be established consistent with the ratio of resource sharing agreed upon under the cooperative agreement (see paragraph (e)(2) of this section). While the schedule for milestone achievement must reflect the project being undertaken, the frequency should not be greater than one payment per month. For many projects, scheduling milestones to be accomplished about every 60 to 90 days appears to be most workable. Partial or interim milestone payments may not be made.

(4) The final milestone payment should be structured so that the associated payment is large enough to provide incentive to the recipient to complete its responsibilities under the cooperative agreement. Alternatively, funds may be reserved for disbursement after completion of the effort.

(e) *Incremental funding.* Whenever the period of performance for the cooperative agreement crosses fiscal years, the agreement shall be incrementally funded using appropriations from different fiscal years. In other circumstances, incremental funding may be appropriate. The total amount of funds obligated during the course of a fiscal year must be sufficient to cover the Government's share of the costs anticipated to be incurred by the recipient during that fiscal year. NASA may allot funds to an agreement at various times during a fiscal year in anticipation of the occurrence of costs. However, there must always be sufficient funds obligated to cover all milestone payments expected to be made during the current fiscal year.

(f) *Profit applicability.* 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. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the recipient's consortium and not subcontractors.

(g) *Independent Research and Development (IR&D) costs.* When determining the applicable dollar amounts or reasonableness of proposed IR&D costs to be included as part of the recipient's cost share, agreement officers should seek assistance from DCAA or the cognizant audit agency.

(1) In accordance with FAR 31.205–18(e), IR&D costs may include costs contributed by contractors in performing cooperative research and development agreements or similar arrangements, entered into under sections 203(c)(5) and (6) of the National

Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6)). IR&D costs incurred by a contractor pursuant to these types of cooperative agreements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(2) IR&D costs (or an agreed upon portion of IR&D costs) incurred by the recipient's organization and deemed by NASA as the same type of research being undertaken by the cooperative agreement between NASA and the recipient may serve as part of the recipient's contribution of shared costs under the cooperative agreement. When considering the use of IR&D costs as part of the recipient's cost share, the IR&D costs offered by the recipient shall meet the requirements of FAR 31.205–18. Any IR&D costs incurred in a prior period, and offered as part of the recipient's cost share shall meet the criteria established by FAR 31.205–18(d), Deferred IR&D Costs.

§ 1274.205 Consortia as recipients.

(a) The use of consortia as recipients for cooperative agreements is encouraged. Such arrangements tend to bring a broader range of capabilities and resources to the cooperative agreement. In addition, consortium members can better share the projects financial costs (e.g., the 50 percent recipient's cost share or other costs of performance).

(b) NASA enters into an agreement with only one entity (as identified by the consortium members). (Also see § 1274.940.) 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.

(c) 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. The Articles of Collaboration must designate a lead firm to represent the consortium and authority to sign on the consortium's behalf. It should also address to the extent appropriate—

(1) Commitments of financial, personnel, facilities and other resources;

(2) A detailed milestone chart of consortium activities;

(3) Accounting requirements;

(4) Subcontracting procedures;

(5) Disputes;

(6) Term of the agreement;

(7) Insurance and liability issues;

(8) Internal and external reporting requirements;

(9) Management structure of the consortium;

(10) Obligations of organizations withdrawing from the consortia;

(11) Allocation of data and patent rights among the consortia members

(12) Agreements, if any, to share existing technology and data;

(13) The firm that 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, and address employee policy or other personnel issues.

(d) The consortium's charter or bylaws may be substituted for the Articles of Collaboration only if they are inclusive of all of the required information.

(e) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process. Articles of Collaboration do not become part of the resulting cooperative agreement.

§ 1274.206 Metric Conversion Act.

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. NASA's policy with respect to the metric measurement system is stated in NPD 8010.2, Use of the Metric System of Measurement in NASA Programs.

§ 1274.207 Extended agreements.

(a) Multiple year cooperative agreements are encouraged, but normally they should span no more than three years.

(b) Cooperative agreements that will exceed $5 million and have a period of

performance in excess of 5 years shall require the approval of the Assistant Administrator for Procurement prior to award. Requests for approval shall include a justification for exceeding 5 years and evidence that the extended years can be reasonably priced. Requests for approval are not required when the 5-year limitation is exceeded due to a no cost extension.

(c) Cooperative agreement renewals provide for the 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 cooperative agreement renewal. Renewals will be awarded as new cooperative agreements. Continued performance within a period specified under a multiple year cooperative agreement provision does not constitute a renewal.

(d) The provisions set forth in § 1274.901 are generally considered appropriate for agreements not exceeding 3 years and/or a Government cash contribution not exceeding $20M. For cooperative agreements expected to be longer than 3 years and/or involve Government cash contributions exceeding $20M, consideration should be given to provisions which place additional restrictions on the recipient in terms of validating performance and accounting for funds expended.

[67 FR 45790, July 10, 2002, as amended at 68 FR 14535, Mar. 26, 2003]

§ 1274.208 Intellectual property.

(a) *Intellectual property rights.* A cooperative agreement covers the disposition of rights to intellectual property 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) *Rights in patents.* 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 nonprofit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) *Inventions.* There are five situations in which inventions may arise under a cooperative agreement—

(1) Recipient Inventions;

(2) Subcontractor Inventions;

(3) NASA Inventions;

(4) NASA Support Contractor Inventions; and

(5) Joint Inventions with Recipient.

(d) *Recipient inventions.* (1) 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.

(2) 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.

(e) *Subcontractor inventions*—(1) *Large business.* If a recipient enters into 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 performed 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) 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.

(2) *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.

(3) *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.

(4) Notwithstanding paragraphs (e)(1), (2), and (3) 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:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the recipient may deem necessary; or

(ii) If unable to reach agreement pursuant to paragraph (e)(4)(i) 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.

(f) *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 a 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.

(g) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under an 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 by NASA to

work under the agreement and inventions are made by support contractor employees, the support contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, upon timely request, NASA will use its best efforts to grant the 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.

(h) *Joint inventions.* (1) 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 the 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 agreement 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.

(2) 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 (see paragraph (g) of this section). 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.

(i) *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) 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.

(j) *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. ''Manufactured substantially in the United States'' means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. In making this determination, only the product and its components shall be considered. The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty whether or not a duty-free entry certificate is issued. Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.101(a) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. 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 Assistant Administrator for Procurement (Code HS) upon a showing by the recipient that under the circumstances domestic manufacture is not commercially feasible.

(k) *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.

(l) *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, agreement 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 (i.e., 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 must 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: Non-Proprietary Research Results.'' Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) Section 1274.905(b)(3) requires the recipient to provide NASA a government purpose license for data first produced by the Recipient that constitutes trade secrets or confidential business or financial information. NASA and the recipient shall determine the scope of this license at the time of award of the cooperative agreement. In addition to the purposes given as examples in § 1274.905(b)(3), the license should provide NASA the right to use this data under a separate cooperative agreement or contract issued to a party other than the recipient for the purpose of continuing the project in the event the cooperative agreement is terminated by either party.

(7) 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.

§ 1274.209 Evaluation and selection.

(a) *Factor development.* The agreement officer, along with the NASA evaluation team has discretion to determine the relevant evaluation criteria based upon the project requirements, and the goals and objectives of the cooperative agreement.

(b) *Communications during non-competitive awards.* For cooperative agreements awarded non-competitively (see § 1274.202(b)), there are no restrictions on communications between NASA and the recipient. In addition, there is no requirement for the development and publication of formal evaluation or source selection criteria.

(c) *Communications during competitive awards.* As discussed in § 1274.203(c), when a competitive source selection process will be followed to select the recipient, an appropriate level of care shall be taken by NASA personnel in order to protect the integrity of the source selection process. Therefore, upon release of the formal cooperative agreement notice (CAN), the agreement officer shall direct all procurement personnel associated with the source selection to refrain from communicating with prospective recipients and that all inquiries be referred to the agreement officer, or other authorized representative.

(d) *Selection factors and subfactors.* (1) At a minimum, the selection process for the competitive award of cooperative agreements to commercial entities shall include evaluation of potential recipients' proposals for merit and relevance to NASA's mission requirements through their responses to the publication of NASA evaluation factors. The evaluation factors should include technical and management capabilities (mission suitability), past performance, and proposed costs (including proposed cost share).

(2) For programs that may involve potentially hazardous operations related to flight, and/or mission critical ground systems, NASA's selection factors and subfactors shall provide for evaluation of the recipient's proposed approach to managing risk (e.g., technology being applied or developed, technical complexity, performance specifications and tolerances, delivery schedule, etc.).

(3) As part of the evaluation process, the factors, subfactors, or other criteria should be tailored to properly address the requirements of the cooperative agreement.

(e) *Other factors and subfactors.* Other factors and subfactors may include—

(1) The composition or appropriateness of the business relationship of proposed team members or consortium, articles of collaboration, participation of an appropriate mix of small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, and women-owned business concerns, as well as non-profits and educational institutions, including historically black colleges and universities and minority institutions).

(2) Other considerations may include enhancing U.S. competitiveness, developing a capability among U.S. firms, identification of potential markets, appropriateness of business risks.

(f) *Proposal evaluation.* The proposals shall be evaluated in accordance with the criteria published in the CAN. Proposals selected for award will be supported by documentation as described in 1274.211(b). When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(g) *Technical evaluation.* The technical evaluation of proposals may include peer reviews. Because the business sense of a cooperative agreement proposal is critical to its success, NASA may 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.

(h) *Cost/price evaluation.* (1) Prior to award of a cooperative agreement, agreement officers shall ensure that proposed costs are accurate and reasonable. In order to do so, cost and pricing data may be required. The level of cost and pricing data to be requested shall be commensurate with the analysis necessary to reach agreement on overall proposed project costs. The evaluation of costs shall lead to the determination and verification of total project costs to be shared by NASA and the recipient, as well as establishment of NASA's milestone payment schedule based on its 50 percent cost share. The guidance at FAR 15.4 and NFS 1815.4 can assist in determining whether cost and pricing data are necessary and the level of analysis required. While competition may be present (i.e., more than one proposal is received), in most cases companies are proposing competing technologies and varying approaches that reflect very different methods (and accompanying costs) to satisfy NASA's project objectives. Consequently, this type of competitive environment is very different from an environment where competitive proposals are submitted in response to a request for proposals leading to award of a contract for relatively well-defined program or project requirements.

(2) During evaluation of the cost proposal, the agreement officer, along with other NASA evaluation team members and/or pricing support personnel, shall determine the reasonableness of the overall proposed project costs, including verifying the value of the recipient's proposed non-cash and in-kind contributions. Commitments should be obtained and verified to the extent practicable from the recipient or any associated team members, from which proposed contributions will be made.

(3) If the recipient's proposed contributions include application of IR&D costs, see § 1274.204(g).

(i) *Awards to foreign governments and firms.* (1) An award may not be made to a foreign government. However, if selected as the best available source, an award may be made to a foreign firm. If a proposal is selected from a foreign firm sponsored by their respective government agency, or from entities considered quasi-governmental, approval must be obtained from Headquarters, Program Operations Division (Code HS). Such requests must include detailed rationale for the selection, to include the funding source of the foreign participant. The approval of the Assistant Administrator for Procurement is required to exclude foreign firms from submitting proposals. Award to a foreign firm shall be on a no-exchange-of-funds basis (see NPD 1360.2).

(2) The Office of External Affairs (Code I), shall be notified prior to any announcement of intent to award to a foreign firm. Additionally, pursuant to section 126 of Pub. L. 106–391, as part of

the evaluation of costs and benefits of entering into an obligation to conduct a space mission in which a foreign entity will participate as a supplier of the spacecraft, spacecraft system, or launch system, NASA shall solicit comment on the potential impact of such participation, through notice published in the FedBizOpps or NAIS.

(j) *Safe-guarding proposals.* Competitive proposal information shall be protected in accordance with FAR 15.207, Handling proposals and information. Unsolicited proposals shall be protected in accordance with FAR 15.608, Prohibitions, and FAR 15.609, Limited use of data.

(1) Evaluation team members, the source selection authority, and agreement officers are responsible for protecting sensitive information on the award of a grant or cooperative agreement and for determining who is authorized to receive such information. Sensitive information includes: information contained in proposals; information prepared for NASA's evaluation of proposals; the rankings of proposals for an award; reports and evaluations of source selection panels, boards, or advisory councils; and other information deemed sensitive by the source selection authority or by the agreement officer.

(2) No sensitive information shall be disclosed to persons not on the evaluation team or evaluation panel, unless the Selecting Official or the agreement officer has approved disclosure based upon an unequivocal ''need-to-know'' and the individual receiving the information has signed a Non-Disclosure Certificate. All attendees at formal source selection presentations and briefings shall be required to sign an Attendance Roster and a Disclosure Certificate. The attendance rosters and certificates shall be maintained in official files for a minimum of six months after award.

(3) The improper disclosure of sensitive information could result in criminal prosecution or an adverse action.

(k) *Controls on the use of outside evaluators.* The use of outside evaluators shall be approved in accordance with NFS 1815.207–70(b). A cover sheet with the following legend shall be affixed to data provided to outside evaluators:

GOVERNMENT NOTICE FOR HANDLING PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with.

(l) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NPD 1490.1. The Agreement Officer will be advised in writing of the results of the ICPMO review.

§ 1274.210 Unsolicited proposals.

(a) For a proposal to be considered a valid unsolicited proposal, the submission must—

(1) Be innovative and unique;

(2) Be independently originated and developed by the recipient;

(3) Be prepared without Government supervision, endorsement, direction or direct Government involvement;

(4) Include sufficient technical and cost detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(b) For each unsolicited proposal selected for award, the cognizant technical office will prepare and furnish to the Agreement Officer, a justification for acceptance of an unsolicited proposal (JAUP). The JAUP shall be submitted for the approval of the agreement 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:

(1) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(2) Overall scientific or technical merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(5) Current, open solicitations under which the unsolicited proposal could be evaluated.

(c) Unsolicited proposals shall be handled in accordance with NFS 1815.606, ''Agency Procedures''.

(d) Unsolicited proposals from foreign sources are subject to NPD 1360.2, ''Development of International Cooperation in Space and Aeronautics Programs''.

(e) There is no requirement for a public announcement of the award of a cooperative agreement. In addition, there is no requirement for announcement of awards resulting from unsolicited proposals. However, in those instances where a public announcement is planned and the award is the result of an unsolicited proposal, in addition to the requirements of NFS 1805.303–71(a)(3), NASA personnel must take measures that ensure protection of the data and intellectual property rights of submitters of unsolicited proposals as provided by FAR 5.202(a)(8).

(f) Additional information regarding unsolicited proposals is available in the handbook entitled, ''Guidance for the Preparation and Submission of Unsolicited Proposals'', which is available on the NASA Acquisition Internet Service Website at: *http://ec.msfc.nasa.gov/hq/library/unSolProp.html*.

§ 1274.211 Award procedures.

(a) In accordance with NFS 1805.303–71, the NASA Administrator shall be notified at least three (3) workdays before a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the agreement may be of significant interest to Headquarters.

(b) For awards that are the result of a competitive source selection, the technical officer will prepare and furnish to the agreement officer a signed selection statement based on the selection criteria stated in the solicitation.

(1) *Bilateral award*. All cooperative agreements shall be awarded on a bilateral basis.

(2) *Consortium awards*. If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(c) *Central Contractor Registration (CCR)*. Prior to implementation of the Integrated Financial Management (IFM) System at each center, all grant and cooperative agreement recipients are required to register in the Department of Defense (DOD) Central Contractor Registration (CCR) database. Registration is required in order to obtain a Commercial and Government Entity (CAGE) code, which will be used as a grant and cooperative agreement identification number for the new system. The agreement officer shall verify that the prospective awardee is registered in the CCR database using the DUNS number or, if applicable, the DUNS+4 number, via the Internet at *http://www.ccr2000.com* or by calling toll free: 888–227–2423, commercial: 616–961–5757.

(d) *Certifications, Disclosures, and Assurances*. (1) Agreement officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a cooperative agreement.

(2) Each new proposal shall include a certification for debarment and suspension under the requirements of 2 CFR 180.510 and 1260.117.

(3) Each new proposal for an award exceeding $100,000 shall include a certification, and a disclosure form (SF LLL) if required, on Lobbying under the requirements of 14 CFR 1271.110 and 1260.117.

(4) Unless a copy is on file at the NASA center, recipients must furnish an assurance on NASA Form (NF) 1206

on compliance with Civil Rights statutes specified in 14 CFR parts 1250 through 1253.

[67 FR 45790, July 10, 2002, as amended at 71 FR 62210, Oct. 24, 2006; 72 FR 19785, Apr. 20, 2007]

§ 1274.212 Document format and numbering.

(a) *Formats.* Agreement officers shall use NF 1687A (available via the Internet at *https://extranet.hq.nasa.gov/nef/user/form_search.cfm*), with minimum modification, as the standard cooperative agreement cover page for the award of all cooperative agreements.

(b) *Cooperative agreement numbering system.* Cooperative agreement numbering may be changed once the Integrated Financial Management (IFM) is implemented. Until IFM is implemented, cooperative agreement numbering shall conform to NFS 1804.7102, except that a NCC prefix will be used in lieu of the NAS prefix. Along with the prefix NCC, a one or two digit Center Identification Number, and a sequence number of up to five digits will be used. Inclusive of the prefix and fiscal year, the total number of characters, digits, and spaces cannot exceed 11.

§ 1274.213 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative agreement officer when delegation has been made (particularly when administrative functions are delegated to DOD or another agency), NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076, 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 agreement officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

§ 1274.214 Inquiries and release of information.

NASA personnel shall follow the procedures established in NFS 1805.402 prior to releasing information to the news media or the general public. The procedures established by NFS 1805.403 shall be followed when responding to inquiries from members of Congress.

§ 1274.215 Federal and federally funded construction projects.

(a) In accordance with E.O. 13202 of February 17, 2001, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects'', as amended on April 6, 2001, the Government, or any construction manager acting on behalf of the Government, shall not—

(1) Require or prohibit recipients, potential recipients or subrecipients to enter into or adhere to agreements with one or more labor organizations (as defined in 42 U.S.C. 2000e(d)) on the same or other related construction projects; or

(2) Otherwise discriminate against recipients, potential recipients or subrecipients for becoming, refusing to become, or remaining signatories or otherwise adhering to agreements with one or more organizations, on the same or other related construction projects.

(b) Nothing in this section prohibits the recipient, potential recipients or subrecipients from voluntarily entering into project labor agreements.

(c) The Assistant Administrator for Procurement may exempt a construction project from this policy if, as of February 17, 2001—

(1) The agency or a construction manager acting on behalf of the Government had issued or was party to bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions in paragraph (d)(1) of this section; and

(2) One or more construction contracts (includes any contract awarded by the recipient) subject to such requirements or prohibitions had been awarded.

(d) The Assistant Administrator for Procurement may exempt a particular project, contract, or subcontract from this policy upon a finding that special circumstances require an exemption in

order to avert an imminent threat to public health or safety, or to serve the national security. A finding of ''special circumstances'' may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of, or affiliated with, a labor organization.

[67 FR 77668, Dec. 19, 2002]

Subpart 1274.3—Administration

§ 1274.301 Delegation of administration.

Cooperative agreements may be administered by the awarding activity or the awarding activity may obtain additional administration services in accordance with the procedures provided by NFS 1842.202. NASA Form 1678, NASA Technical Officer Delegation for Cooperative Agreements with Commercial Firms, will be used to delegate responsibilities to the NASA Technical Officer.

§ 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.* NASA legal counsel shall review, for legal sufficiency, all novation agreements or change of name agreements of the recipient, prior to formal execution by the agreement officer.

Subpart 1274.4—Property

§ 1274.401 Government furnished property.

Property or equipment owned by the Government that will be used in the performance of a cooperative agreement shall be included as part of the Government's percentage (usually 50 percent) of shared costs. In most cases the property or equipment will be categorized as non-cash contributions. Agreement officers may use the procedures promulgated by FAR Subpart 45.2, as guidelines to calculate the value of the property or equipment.

§ 1274.402 Contractor acquired property.

As provided in § 1274.923(c), title to property acquired with government funds vests in the government. Under a cost shared cooperative agreement, joint ownership of property equal to the cost-sharing ratio will result if the parties make no specific arrangements regarding such property. The disposition of acquired property should be addressed in the cooperative agreement at the time of award. The cooperative agreement may provide that all such property be contributed by the recipient as a non-cash contribution. A reasonable dollar value must be specified and adequately supported. In this case, title will vest in the recipient. Alternatively, NASA and the recipient may include in the cooperative agreement any other appropriate arrangement for the disposition of acquired property upon completion of the effort.

Subpart 1274.5—Procurement Standards

§ 1274.501 Purpose of procurement standards.

(a) The procurement standards stated in §§ 1274.502 through 1274.510, may not apply to or may supplement the procedures of a commercial recipient that has a purchasing system approved in accordance with the requirements of FAR Subpart 44.3 and NFS 1844.3.

(b) Sections 1274.502 through 1274.510 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.

§ 1274.502 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.

§ 1274.503 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.

§ 1274.504 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 normally be excluded from competing for such procurements, unless conflicts or apparent conflicts of interest issues have been resolved. 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.

§ 1274.505 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide 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 that unduly restrict competition.

(ii) Requirements that 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 business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable. Recipients of NASA awards shall take all of the following steps to further this goal.

(1) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts.

(2) Consider in the contract process whether firms competing for larger contracts intend to subcontract with these businesses and institutions.

(3) Encourage contracting with consortiums or teams of these businesses and institutions when a contract is too large for one of these firms to handle individually.

(4) 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 2 CFR part 180, the implementation of Executive Orders 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 subpart.

(2) 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.

(3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product.

(4) The proposed award over the simplified acquisition 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 simplified acquisition threshold.

[67 FR 45790, July 10, 2002, as amended at 72 FR 19785, Apr. 20, 2007]

§ 1274.506 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 indicies, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 1274.507 Procurement records.

Procurement records and files for purchases in excess of the simplified

acquisition 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.

(c) Basis for award cost or price.

§ 1274.508 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.

§ 1274.509 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 simplified acquisition threshold (currently $100,000) 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 simplified acquisition 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) All negotiated contracts (except those for less than the simplified acquisition 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.

(d) For Construction and facility improvements, 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 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 in this section, 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.''

§ 1274.510 Subcontracts.

Recipients (individual firms or consortia) are not authorized to issue grants or cooperative agreements to subrecipients. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the recipient's consortium and not subcontractors. All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Exhibit A to this part, as applicable and may be subject to approval requirements cited in § 1274.925.

Subpart 1274.6—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) *Indirect cost rate proposals, cost allocations plans, etc.*, 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 1274.7—Suspension or Termination

§ 1274.701 Suspension or termination.

(a) *Suspension*. NASA or the recipient may suspend the cooperative agreement for a mutually agreeable period of time, if an assessment is required to determine whether the agreement should be terminated.

(b) *Termination*. (1) 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, by giving the other party prior written notice. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

(2) NASA may, for example, terminate the Agreement if the recipient is not making anticipated technical progress, if the recipient materially changes the objectives of the agreement, or if appropriated funds are not available to support the program.

(3) Similarly, the recipient may terminate the agreement if, for example, technical progress is not being made, if the commercial recipient shifts its technical emphasis, or if other technological advances have made the effort obsolete.

(4) If the cooperative agreement is terminated by either NASA or the recipient and NASA elects to continue the project with a party other than the recipient, the right of the government to use data first produced by either NASA or the recipient in the performance of this agreement is covered by 1274.905(b). See § 1274.208(l)(6) to assure that appropriate language is contained in § 1274.905(b).

Subpart 1274.8—Post-Award/ Administrative Requirements

§ 1274.801 Adjustments to performance costs.

In order to accomplish program objectives, there may be occasions where additional contributions (cash and/or in-kind contributions) by NASA and the recipient beyond the initial agreement may be needed. There may also be occasions where actual costs of NASA and the recipient may be less than initially agreed. In cases where program costs are adjusted, prior to execution of a modification to the agreement, mutual agreement between NASA and the recipient shall also be reached on the corresponding changes in program requirements such as schedule, work statements and milestone payments. Funding for any work required beyond the initial funding level of the cooperative agreement, shall require submission by the recipient of a detailed proposal to the agreement officer. Prior to execution of a modification increasing NASA's initial cost share or funding levels, detailed cost analysis techniques may be applied, which may include requests for audits services and/or application of other pricing support techniques. Any adjustments or modifications that result in a change to the performance costs of the cooperative agreement shall continue to maintain the share ratio requirements (normally 50/50) stated in § 1274.204(b).

§ 1274.802 Modifications.

Modifications to the cooperative agreement in particular, modifications that affect funding, milestone payments, program schedule and statement of work requirements shall be executed on a bilateral basis.

§§ 1274.803–1274.804 [Reserved]

Subpart 1274.9—Other Provisions and Special Conditions

§ 1274.901 Other provisions and special conditions.

Where applicable, the provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements with commercial

firms. When included, the provisions at § 1274.902 through § 1274.909 and the provisions at § 1274.933 through § 1274.942 are to be incorporated in full text substantially as stated in this regulation. When required, the provisions at § 1274.910 through § 1274.932, may be incorporated by reference in an enclosure to each cooperative agreement. For inclusion of provisions in subcontracts, see Exhibit A of this part, and § 1274.925.

§ 1274.902 Purpose.

PURPOSE

July 2002

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

July 2002

(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. The following NASA responsibilities are hereby set forth effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities *Start Date* *End Date*

(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 effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities *Start Date* *End Date*

(d) 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.

(e) Unless the Cooperative Agreement is terminated by the parties, end date can only be changed by execution of a bilateral modification.

[End of provision]

§ 1274.904 Resource sharing requirements.

RESOURCE SHARING REQUIREMENTS

July 2002

Where NASA and other Government agencies are involved in the cooperative agreement, ''NASA'' shall also mean ''Federal Government''.

(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 FAR Parts 30 and 31, and NFS Parts 1830 and 1831.

(b) The funding and non-cash contributions by both parties are represented by the following dollar amounts:

Government Share _____

Recipient Share _____

Total Amount _____

(c) 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 FAR 31.205–18(e).

[End of provision]

[67 FR 45790, July 10, 2002, as amended at 71 FR 51714, Aug. 31, 2006]

§ 1274.905 Rights in data.

As noted in § 1274.208(l)(1), the following provision 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 provisions may be appropriate. The Agreement Officer is expected to complete and/or select the appropriate bracketed language under the provision for those paragraphs dealing with data first produced under the cooperative agreement. In addition, the Agreement Officer may, in consultation with the Center's Patent or Intellectual Property Counsel, tailor the provision to fit the particular circumstances of the program and/or the recipient's need to protect specific proprietary information.

RIGHTS IN DATA

July 2002

(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 below in 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. Use of this data under a separate cooperative agreement or contract issued to a party other than the Recipient for the purpose of continuing the project in the event this cooperative agreement is terminated by either party shall constitute a government purpose.

(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 section, 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 the above, 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 section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, 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

July 2002

(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 Agreement 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 Agreement Officer. The respective responsibilities and authorities of the above-named representatives are set forth in NFS 1827.305–370.

[End of provision]

§ 1274.907 Disputes.

DISPUTES

July 2002

(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 Center Ombudsman, 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.

[End of provision]

§ 1274.908 Milestone payments.

MILESTONE PAYMENTS

July 2002

(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 Agreement Officer shall authorize payment. Payment shall be made within 30 calendar days after receipt of proper invoice. Payment shall be considered as being made on the date of electronic funds transfer. A proper invoice must include the following:

(i) Name and address of the recipient.

(ii) Invoice date (The Recipient is encouraged to date invoices as close as possible to the date of the mailing or transmission).

(iii) Cooperative agreement number.

(iv) Description, milestone, and extended price of efforts/tasks performed.

(v) Payment terms.

(vi) Name and address of Recipient official to whom payment is to be sent. (Must be the same as that in the cooperative agreement or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of the person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the cooperative agreement.

(ix) Taxpayer identification number (TIN).

(x) While not required, the recipient is strongly encouraged to assign an identification number to each invoice.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent of the Agreement Officer.

(e) The recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) Unless approved by the Agreement Officer, all preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) (i) If the Recipient is authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to:

[Insert the mailing address for submission of cost vouchers]

(ii) If the Recipient is not authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to the Agreement Officer for certification.

(iii) Copies of the recipient's invoice should be submitted to the following offices:

(A) Copy 1—NASA Agreement Officer.

(B) Copy 2—Auditor.

(C) Copy 3—Contract administration office.

(D) Copy 4—Project management office.

(E) Copy 5—Other recipients as designated by the Agreement Officer.

[End of provision]

§ 1274.909 Term of agreement.

TERM OF AGREEMENT

July 2002

(a) 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. Requests for approval for no-cost extensions must be forwarded to the NASA Agreement Officer no

later than ten days prior to the expiration of the award to be considered.

(b) 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

July 2002

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

July 2002

(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.

(9) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(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 section. 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, the recipient will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR Part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains 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 section. 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 section.

(ii) For small business firms and nonprofit organization, 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 paragraphs (b)(2), (b)(3), or (b)(4) of this section 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 section, 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 Assistant 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)

July 2002

(a) *Definitions.* (1) *Administrator,* as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Invention,* as used in this clause, 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,* as used in this clause, 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,* as used in this clause, 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,* as used in this clause, 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,* as used in this clause, 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,* as used in this clause, 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*).

(9) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with Federal Acquisition Regulation 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(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 Agreement 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 section. 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 section 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 promulgated 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 Agreement 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 section 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 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 section. 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 3, 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 1245.112, 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 Agreement 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 Agreement 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 Agreement 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 Agreement Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Agreement Officer) from the date of the Agreement, 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 section have been followed.

(ii) A final report, within three months after completion of the 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 Agreement 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 (FAR) 27.302(j), 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 Agreement 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 section; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Agreement Officer learns of an unreported Recipient invention that the Agreement 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 Agreement 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 Agreement 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 Agreement Officer.

(3) The Recipient shall promptly notify the Agreement 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 Agreement 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 section, 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 section, 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 section, 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, as amended, sec. 305). 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 3). 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 Assistant 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 clause 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)

July 2002

(a) *Definitions.* (1) *Invention,* as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) *Made,* as used in this clause, when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) *Nonprofit organization,* as used in this clause, 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,* as used in this clause, 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,* as used in this clause, 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,* as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(7) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(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 section 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 section, 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 section; provided, however, that if the Recipient has filed a patent application in a

country after the times specified in paragraph (c) of this section, 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 section. 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 Subpart 1245.1, 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 section 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 section, 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 section. 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 Agreement Officer the following:

(i) A listing every 12 months (or such longer period as the Agreement 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 Agreement 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; and

(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 Agreement 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 Agreement Officer.

(3) The Recipient shall promptly notify the Agreement 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 Agreement 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 section, 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 section, 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 section 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 office:

(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, as amended, sec. 305). 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 3). 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 section. 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 Assistant 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 section 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 Agreements 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.

(l) *Documentation submissions.* 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 Agreement 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

July 2002

(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 agreement, 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 agreement, 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 an agreement, 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 agreement execution, must be submitted to the Agreement Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of an agreement will be forwarded by the Contracting or 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 Agreement Officer of the Administrator's determination. The Agreement 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 agreement. In the latter event, the petitioner will be so notified by the Agreement 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 the Regulations.

[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

July 2002

(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 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 Agreement 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.

The following provision is applicable to all cooperative agreements with commercial firms, except programs or projects that are subject to Section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

LIABILITY AND RISK OF LOSS

July 2002

(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

July 2002

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

July 2002

(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 may supplement the Agreement, as required, until it is fully funded. Any work beyond the funding limit will be at the recipient's risk.

(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

July 2002

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 implemented by FAR Parts 30, 31, and 48 CFR part 99. (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.'')

[End of provision]

§ 1274.920 Responsibilities of the NASA technical officer.

RESPONSIBILITIES OF THE NASA TECHNICAL OFFICER

July 2002

(a) The NASA Agreement Officer and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Agreement Officer 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. In the event of perceived

interference, dispute resolution procedures apply as set forth in 1274.907.

[End of provision]

§ 1274.921 Publications and reports: non-proprietary research results.

The requirements set forth under this provision may be modified by the Agreement Officer based on specific report needs for the particular grant or cooperative agreement.

PUBLICATIONS AND REPORTS: NON-PROPRIETARY RESEARCH RESULTS

July 2002

(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 progress 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 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) Progress 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—Agreement Officer.

(2) Copy—Technical Officer

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Parkway Center, Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076.

[End of provision]

§ 1274.922 Suspension or termination.

SUSPENSION OR TERMINATION

July 2002

(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. With prior written notice, 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

February 2004

(a) 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 (FAR) 45.301), or to procure passenger carrying vehicles.

(b) Contractor acquired equipment or property used in performance of the Cooperative Agreement shall be controlled in accordance with 48 CFR (FAR) 45.6.

(c) 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 (FAR) 45.603. 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. Under a shared cost arrangement, the Government and the Recipient have joint ownership of acquired property in accordance with the cost share ratio. Jointly owned property shall be disposed of as agreed to by the parties.

(d) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government prior to completion of the work) will remain with the Government.

(e) The Recipient shall establish and maintain property management standards for Government property and otherwise manage such property as set forth in 48 CFR (FAR) 45.5 and 48 CFR (NFS) 1845.5.

(f) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

(g) As of the date of this rewrite, process changes have been made to facilitate electronic submission of NF 1018. Recipients may use the procedures established by NASA Procurement Notice (PN) 97–64, issued on August 9, 2001.

[End of provision]

[67 FR 45790, July 10, 2002, as amended at 69 FR 5017, Feb. 3, 2004]

§ 1274.924 Civil rights.

CIVIL RIGHTS

July 2002

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, 1252 and 1253).

[End of provision]

§ 1274.925 Subcontracts.

SUBCONTRACTS

July 2002

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Agreement Officer consent is required for subcontracts over[dollar threshold inserted by Agreement Officer] and/or subcontracts for [critical systems, subsystems, components, or services inserted by Agreement Officer and Cognizant NASA Project Office]_____.

(c) If not submitted by the Recipient and accepted by NASA in the original proposal. The Recipient shall provide the following information to the Agreement 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.

(d) The Recipient shall utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable.

(e) All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the Recipient's consortium and not subcontractors.

[End of provision]

§ 1274.926 Clean Air-Water Pollution Control Acts.

CLEAN AIR-WATER POLLUTION CONTROL ACTS

July 2002

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Agreement 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. 1857 *et seq.* as amended by Public Law 91–604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Public Law 92–500) 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 clause in every subcontract hereunder in excess of $100,000, and to take such action as the Contracting or 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 (SEP 2014)

NASA cooperative agreements are subject to the provisions of 2 CFR Part 180, Government-wide Debarment and Suspension (Nonprocurement) and 2 CFR Part 182, Government-wide requirements for Drug-Free Workplace, unless excepted by 2 CFR 180.110 or 180.610.

[End of Provision]

[79 FR 56488, Sept. 22, 2014]

§ 1274.928 Foreign national employee investigative requirements.

FOREIGN NATIONAL EMPLOYEE INVESTIGATIVE REQUIREMENTS

July 2002

(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, Code I, 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

July 2002

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

July 2002

(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

July 2002

Payments under this cooperative agreement will be made by the Government by 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 Agreement 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

July 2002

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 provisions of this clause shall apply to any subcontractor performing substantive work under this cooperative agreement.

[End of provision]

§ 1274.933 Summary of recipient reporting responsibilities.

SUMMARY OF RECIPIENT REPORTING RESPONSIBILITIES

July 2004

This cooperative agreement requires the recipient to submit a number of reports. These reporting requirements are summarized below. In the event of a conflict between this provision and other provisions of the cooperative agreement requiring reporting, the other provisions take precedence.

[*The Agreement Officer may add/delete reporting requirements as appropriate.*]

Report	Frequency	Reference
Report of Joint NASA/Recipient Inventions	As required	1274.911 Patent Rights (Paragraph (b)(4))
Interim Report of Reportable Items	Every 12 months	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(i))

Report	Frequency	Reference
Final Report of Reportable Items	3 months after completion	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(ii))
Disclosure of Subject Inventions	Within 2 months after inventor discloses it to Recipient.	1274.912 Patent Rights Retention by the Recipient (Large Business) (Paragraph (e)(2)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(1))
Election of Title to a Subject Invention	1 year after disclosure of the subject invention if a statutory bar exists, otherwise within 2 years.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(2))
Listing of Subject Inventions	Every 12 months from the date of the agreement.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(5)(i))
Subject Inventions Final Report	Prior to close-out of the agreement	1274.913 Retention by the Recipient (Small Business) (Paragraph (f)(5)(ii))
Notification of Decision to Forego Patent Protection.	30 days before expiration of the response period.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(3))
Notification of a Subcontract Award	Promptly upon award of a subcontract	1274.912 Patent Rights—Retention by the Recipient (Large Business)(Paragraph (g)(3)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (g)(3))
Utilization of Subject Invention	Annually	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (h))
Notice of Proposed Transfer of Technology.	Prior to transferring technology to foreign firm or institution.	1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (Paragraph (b))
Progress Report	60 days prior to the anniversary date of the agreement (except final year).	1274.921 Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(1))
Summary of Research	90 days after completion of agreement	1274.921 Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(2))
NASA Form 1018 Property in the Custody of Contractors.	Annually by October 15	1274.923 Equipment and Other Property (Paragraph (f))
NASA Form 1018 Property in the Custody of Contractors.	60 days after expiration date of agreement.	1274.923 Equipment and Other Property (Paragraph (f))

[67 FR 45790, July 10, 2002, as amended at 69 FR 41936, July 13, 2004]

§ 1274.934 Safety.

SAFETY

July 2002

NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this cooperative agreement. The recipient shall comply with all applicable federal, state, and local laws relating to safety. The Recipient shall maintain a record of, and will notify the NASA Agreement Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property. The Recipient will immediately (within one workday) advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this cooperative agreement involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Recipient. Compliance with this provision by subcontractors shall be the responsibility of the Recipient.

[End of provision]

§ 1274.935 Security classification requirements.

SECURITY CLASSIFICATION REQUIREMENTS

July 2002

Performance under this Cooperative Agreement will involve access to and/or generation of classified information, work in a secure area, or both, up to the level of [*insert the applicable security clearance level*]. Federal Acquisition Regulation clause 52.204–2 shall apply to this Agreement and DD Form 254, Contract Security Classification Specification Attachment _____ [*Insert the attachment number of the DD Form 254.*]

[End of provision]

§ 1274.936 Breach of safety or security.

BREACH OF SAFETY OR SECURITY

July 2002

Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: The public; astronauts and pilots; the NASA workforce (including contractor employees working on NASA contracts); and high-value equipment and property. A major breach of safety by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Agreement. A major breach of safety must be related directly to the work on the Agreement. A major breach of safety is an act or omission of the Recipient that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(a) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Cooperative Agreement. A major breach of security may occur on or off Government installations, but must be related directly to the work on the Cooperative Agreement. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(b) In the event of a major breach of safety or security, the Recipient shall report the breach to the Agreement Officer. If directed by the Agreement Officer, the Recipient shall conduct its own investigation and report the results to the Government. The Recipient shall cooperate with the Government investigation, if conducted.

[End of provision]

§ 1274.937 Security requirements for unclassified information technology resources.

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES

July 2002

(a) The Recipient shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Recipient for NASA, regardless of location. This provision is applicable to all or any part of the cooperative agreement that includes information technology resources or services in which the Recipient must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the Recipient's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The Recipient shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this cooperative agreement. The plan shall describe those parts of the cooperative agreement to which this provision applies. The Recipient's IT Security Plan shall be compliant with

Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and

(3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within ____ days after cooperative agreement award, the Recipient shall submit for NASA approval an IT Security Plan. This plan must be consistent with and further detail the approach contained in the Recipient's proposal that resulted in the award of this cooperative agreement and in compliance with the requirements stated in this provision. The plan, as approved by the Agreement Officer, shall be incorporated into the cooperative agreement as a compliance document.

(d)(1) Recipient personnel requiring privileged access or limited privileged access to systems operated by the Recipient for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this provision. Those Recipient personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this provision, unless Recipient screening in accordance with paragraph (d)(4) is approved. The Recipient shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after cooperative agreement award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT–1 has the highest level of risk):

(i) IT–1—Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT–2—Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of ''level 1'' data whose cost to replace exceeds one million dollars.

(iii) IT–3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Recipient for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT–1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions;

(ii) IT–2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT–3: NASA Form 531, Name Check, and FC 258.

(4) The Agreement Officer may allow the Recipient to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Recipient can demonstrate that the procedures used by the Recipient are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of Recipient personnel may be waived by the Agreement Officer for those individuals who have proof of—

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Recipient, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Agreement Officer under paragraph (d)(4) of this provision.

(e) The Recipient shall ensure that its employees, in performance of the cooperative agreement, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The Recipient may use web-based training available from NASA to meet this requirement.

(f) The Recipient shall afford NASA, including the Office of Inspector General, access to the Recipient's, subcontractors' or

subawardees' facilities, installations, operations, documentation, databases and personnel used in performance of the cooperative agreement. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Recipient shall incorporate the substance of this clause in all subcontracts or subagreements that meet the conditions in paragraph (a) of this provision.

[End of provision]

§ 1274.938 Modifications.

MODIFICATIONS

July 2002

During the term of this agreement and in the interest of achieving program objectives, the parties may agree to changes that affect the responsibility statements, milestones, or other provisions of this agreement. Any changes to this agreement will be accomplished by a written bilateral modification.

[End of provision]

§ 1274.939 Application of Federal, State, and Local laws and regulations.

APPLICATION OF FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

July 2002

(a) *Federal Laws and Regulations.* This Cooperative Agreement shall be governed by the Federal Laws, regulations, policies, and related administrative practices applicable to this Cooperative Agreement on the date the Agreement is executed. The Recipient understands that such Federal laws, regulations, policies, and related administrative practices may be modified from time to time. The Recipient agrees to consider modifying this Agreement to be governed by those later modified Federal laws, regulations, policies, and related administrative practices that directly affect performance of the Project.

(b) *State or Territorial Law and Local Law.* Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Cooperative Agreement shall require the Recipient to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Cooperative Agreement violate any applicable State or territorial law, or if compliance with the provisions of the Agreement would require the Recipient to violate any applicable State or territorial law, the Recipient agrees to notify the Government (NASA) immediately in writing in order that the Government and the Recipient may make appropriate arrangements to proceed with the Project as soon as possible.

(c) *Changed Conditions of Performance (Including Litigation).* The Recipient agrees to notify the Government (NASA) immediately of any change in State or local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Cooperative Agreement. In addition, the Recipient agrees to notify the Government (NASA) immediately of any decision pertaining to the Recipient's conduct of litigation that may affect the Government's interests in the Project or the Government's administration or enforcement of applicable Federal laws or regulations. Before the Recipient may name the Government as a party to litigation for any reason, the Recipient agrees to inform the Government; this proviso applies to any type of litigation whatsoever, in any forum.

(d) *No Government Obligations to Third Parties.* Absent the Government's express written consent, and notwithstanding any concurrence by the Government in or approval of the award of any Agreement of the Recipient (third party contract) or subcontract of the Recipient (third party subcontract) or the solicitation thereof, the Government shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person(s).

[End of provision]

§ 1274.940 Changes in recipient's membership.

CHANGES IN RECIPIENT'S MEMBERSHIP

July 2002

The Recipient shall notify the cognizant Agreement Officer within seven (7) days of any change in the corporate membership (ownership) structure of the Recipient, including the addition or withdrawal of any of the Recipient's affiliated members (e.g., Consortium Member). If NASA reasonably determines that any change in the corporate membership (ownership) of Recipient will conflict with NASA's objectives for the _____ Project or any statutory or regulatory restriction applicable to the agency, NASA may terminate this Agreement after giving the Agreement Recipient at least ninety (90) days prior written notice of such perceived conflict and a reasonable opportunity to cure such conflict.

[End of provision]

§ 1274.941 Insurance and indemnification.

The following provision is applicable to all cooperative agreements with commercial firms that involve programs or projects that are subject to Section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

INSURANCE AND INDEMNIFICATION

July 2002

(a) *General*. The Recipient has applied, under the provisions of Section 431 of Public Law 105–276 (Section 431), for indemnification by the Government against certain third party damage claims that might arise under the Agreement. Under Section 431, a necessary prerequisite to, and consideration for, the Government's granting such indemnification is the Recipient's obtaining insurance against an initial increment of such damages arising from certain third party claims. This provision sets forth the requirements for this insurance prerequisite to a Government grant of indemnification.

(b) *Definitions*. The definitions at 14 CFR 1266, Cross-Waivers and Indemnification, apply to this provision.

(c) *Insurance*. The Recipient shall obtain, as part of its financial contribution, insurance that meets the following parameters:

(1) The insurance policy or policies shall insure against damages incurred by third parties arising from covered activities;

(2) The amount of insurance applicable to each launch shall be [Amount to be inserted by the contracting officer]. The Government may subsequently increase the amount of insurance the Recipient is required to maintain to qualify for indemnification, for one or more launches, and the Recipient shall pay the additional cost of such increases from its financial contribution; and

(3) The insurance policy or policies shall name the parties and their related entities, and the employees of the parties and their related entities, as named insureds.

Nothing in this provision precludes the Recipient from obtaining, at no cost to the Government, such other insurance as the Recipient determines advisable to protect its business interests.

(d) *Proof of Insurance*. The Recipient shall provide proof of insurance that meets the parameters in paragraph (c) of this provision and that is acceptable to the Agreement Officer:

(1) Within 30/60 days after the execution of the modification adding this provision to the Agreement;

(2) No later than 30 days before each launch; and

(3) Within 7 days after a request by the Agreement Officer.

Moreover, the Recipient shall promptly notify the Agreement Officer of any termination, or of any change to the terms or conditions of an insurance policy or policies for which proof of insurance was provided.

(e) *Notification of Claims*. The Recipient shall—

(1) Promptly notify the Agreement Officer of any third party claim or suit against the Recipient, one of its related entities, any employee of the Recipient or its related entities, or any insurer of the Recipient for damages resulting from covered activities;

(2) Furnish evidence or proof of any such claim, suit or damages, in the form required by NASA; and

(3) Immediately furnish to NASA, or its designee, copies of all information received by the Recipient, or by any related entity, employee or insurer that is pertinent to such claim, suit or damages.

(f) *NASA Concurrence in Settlements*. NASA shall concur or not concur in each settlement of a third party claim by the Recipient's insurer(s). For purposes of determining the amount of indemnification under this cooperative agreement. Adjudicated claims shall be deemed concurred in by NASA.

[End of provision]

§ 1274.942 Export licenses.

EXPORT LICENSES

July 2002

(a) The Recipient shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799, in the performance of this Cooperative Agreement. In the absence of available license exemptions/exceptions, the Recipient shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

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

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

(d) The Recipient shall be responsible for ensuring that the requirements of this provision apply to its subcontractors.

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

[End of provision]

§ 1274.943 Investigation of research misconduct.

INVESTIGATION OF RESEARCH MISCONDUCT

May 2005

Recipients of this cooperative agreement are subject to the requirements of 14 CFR part 1275, ''Investigation of Research Misconduct.''

[End of provision]

[70 FR 28809, May 19, 2005]

APPENDIX TO PART 1274—LISTING OF EXHIBITS

EXHIBIT 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 E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 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 $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 Subsection 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 (42 U.S.C. 7401 *et seq.*) and the Federal Water

Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—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 (E.O.s 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 E.O.s 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 E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

EXHIBIT B TO PART 1274—REPORTS

1. Property Reporting.

As provided in paragraph (f) of §1274.923, an annual NASA Form (NF) 1018, NASA Property in the Custody of Contractors, will be submitted by October 31 of each year. Negative annual reports are required. A final report is required within 30 days after expiration of the agreement (also see paragraph (g) of 1274.923 for electronic submission guidance).

2. Disclosure of Lobbying Activities (SFLLL)

(a) Agreement 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 imple mented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

[67 FR 45790, July 10, 2002, as amended at 72 FR 40066, July 23, 2007]

PART 1275—RESEARCH MISCONDUCT

Sec.
1275.100 Purpose and scope.
1275.101 Definitions.
1275.102 OIG handling of research misconduct matters.
1275.103 Role of awardee institutions.
1275.104 Conduct of Inquiry by the OIG.
1275.105 Conduct of the OIG investigation of research misconduct.
1275.106 Administrative actions.
1275.107 Adjudication.
1275.108 Appeals.
APPENDIX: NASA RESEARCH DISCIPLINES AND RESPECTIVE ASSOCIATED ENTERPRISES

AUTHORITY: Pub. L. 85–568, 72 Stat. 426, 42 U.S.C. 2473.

SOURCE: 69 FR 42103, July 14, 2004, unless otherwise noted.

§1275.100 Purpose and scope.

(a) The purpose of this part is to establish procedures to be used by the National Aeronautics and Space Administration (NASA) for the handling of allegations of research misconduct. Specifically, the procedures contained in this part are designed to result in:

(1) Findings as to whether research misconduct by a person or institution has occurred in proposing, performing, reviewing, or reporting results from research activities funded or supported by NASA; and

(2) Recommendations on appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred.

(b) This part applies to all research wholly or partially funded or supported by NASA. This includes any research conducted by a NASA installation and any research conducted by a public or private entity receiving NASA funds or using NASA facilities, equipment or personnel, under a contract, grant, cooperative agreement, Space Act agreement, or other transaction with NASA.

(c) NASA shall make a determination of research misconduct only after careful inquiry and investigation by an awardee institution, another Federal agency, or NASA, and an adjudication conducted by NASA. NASA shall afford the accused individual or institution a chance to comment on the investigation report and a chance to appeal the decision resulting from the adjudication. In structuring procedures in individual cases, NASA may take into account procedures already followed by other entities investigating the same allegation of research misconduct. Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part.

(d) A determination that research misconduct has occurred must be accompanied by recommendations on appropriate administrative actions. However, the administrative actions themselves may be imposed only after further procedures described in applicable Federal acquisition and NASA regulations concerning contracts, cooperative agreements, grants, Space Act agreements, or other transactions, depending on the type of agreement used to fund or support the research in question. Administrative actions involving NASA civil service employees may be imposed only in compliance with all relevant Federal laws and policies.

(e) Allegations of research misconduct concerning NASA research may be transmitted to NASA in one of the following ways: By mail address to the Office of Inspector General (OIG), National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546–0001 via the NASA OIG Hotline at 1–800–424–9183, or cyber hotline at *http://oig.nasa.gov/hotline.html*.

(f) To the extent permitted by law, the identity of the Complainant, witnesses, or other sources of information who wish to remain anonymous shall be kept confidential. To the extent permitted by law, NASA shall protect the research misconduct inquiry, investigation, adjudication, and appeal records maintained by NASA as exempt from mandatory disclosure under 5 U.S.C. 552, the Freedom of Information Act, as amended, and 5 U.S.C. 552a, the Privacy Act, as amended.

[69 FR 42103, July 14, 2004, as amended at 77 FR 44440, July 30, 2012]

§ 1275.101 Definitions.

(a) Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. Research as used in this part includes all basic and applied research as defined in OMB Circular A–11 in all fields of science, engineering, and mathematics, including, but not limited to, research in space and Earth sciences, economics, education, linguistics, medicine, psychology, social sciences, statistics, and biological and physical research (ground based and microgravity), including research involving human subjects or animals.

(b) *Fabrication* means making up data or results and recording or reporting them.

(c) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(d) *Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(e) *Awardee institution* means any public or private entity or organization (including a Federal, State, or local agency) that is a party to a NASA contract, grant, cooperative agreement, Space Act agreement, or to any other transaction with NASA, whose purpose includes the conduct of research.

(f) *NASA research* means research wholly or partially funded or supported by NASA involving an awardee institution or a NASA installation. This definition includes research wholly or partially funded by NASA appropriated funds, or research involving the use of NASA facilities, equipment, or personnel.

(g) *NASA research discipline* means one of the following areas of research that together comprise NASA's research mission for aeronautics, space science, Earth science, biomedicine, biology, engineering and physical sciences (physics and chemistry).

(h) *Inquiry* means the assessment of whether an allegation of research misconduct has substance and warrants an investigation.

(i) *Investigation* means the formal development of a factual record and the examination of that record leading to recommended findings on whether research misconduct has occurred, and if the recommended findings are that such conduct has occurred, to include recommendations on appropriate administrative actions.

(j) *Complainant* is the individual bringing an allegation of research misconduct related to NASA research.

(k) *Respondent* is the individual or institution who is the subject of an allegation of research misconduct related to NASA research.

(l) *Adjudication* means the formal procedure for reviewing and evaluating the investigation report and the accompanying evidentiary record and for determining whether to accept the recommended findings and any recommendations for administrative actions resulting from the investigation.

(m) NASA Adjudication Official is the NASA Associate Administrator of a Mission Directorate, Chief Technologist, or Chief Engineer, depending on the research area involved in the misconduct allegation (as described in the list of NASA research disciplines and their associated directorates contained in the Appendix to this part).

(n) *Appeal* means the formal procedure initiated at the request of the Respondent for review of a determination resulting from the adjudication and for affirming, overturning, or modifying it.

(o) *NASA Appeals Official* is the NASA Deputy Administrator or other official designated by the NASA Administrator.

[69 FR 42103, July 14, 2004, as amended at 77 FR 44441, July 30, 2012]

§ 1275.102 OIG handling of research misconduct matters.

(a) When an allegation is made to the OIG, rather than to the awardee institution, the OIG shall determine whether the allegation concerns NASA research and whether the allegation, if true, falls within the definition of research misconduct in § 1275.101(a). Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part. If these criteria are met and the research in question is being conducted by NASA researchers, the OIG shall proceed in accordance with § 1275.104. If the research in question is being conducted at an awardee institution, another Federal agency, or is a collaboration between NASA researchers and co-investigators at either academia or industry, the OIG must refer the allegation that meets the definition of research misconduct to the entities involved and determine whether to—

(1) Defer its inquiry or investigation pending review of the results of an inquiry or investigation conducted at the awardee institution or at the Federal agency (referred to for purposes of this part as *external investigations*) determined to be the lead investigative organization for the case; or

(2) Commence its own inquiry or investigation.

(b) The OIG must inform the NASA Office of the Chief Scientist of all allegations that meet the definition of research misconduct received by the OIG and of the determinations of the OIG required by § 1275.101. The NASA Office of the Chief Scientist shall notify the NASA Office of the Chief Engineer or the NASA Office of the Chief Technologist when the research is either engineering or technology research.

(c) The OIG should defer its inquiry or investigation pending review of the results of an external investigation whenever possible. Nevertheless, the OIG retains the right to proceed at any time with a NASA inquiry or investigation. Circumstances in which the OIG may elect not to defer its inquiry or investigation include, but are not limited to, the following:

(1) When the OIG determines that the awardee institution is not prepared to handle the allegation in a manner consistent with this part;

(2) When the OIG determines that NASA involvement is needed to protect the public interest, including public health and safety;

(3) When the OIG determines that the allegation involves an awardee institution of sufficiently small size that it cannot reasonably conduct the investigation itself;

(4) When the OIG determines that a NASA program or project could be jeopardized by the occurrence of research misconduct; or

(5) When the OIG determines that any of the notifications or information required to be given to the OIG by the awardee institution pursuant to § 1275.103(b) requires NASA to cease its deferral to the awardee institution's procedures and to conduct its own inquiry or investigation.

(d) A copy of the investigation report, evidentiary record, and final determination resulting from an external

investigation must be transmitted to the OIG for review. The OIG shall determine whether to recommend to the NASA Adjudication Official, or to the lead investigative organization in cases that involve multiple institutions, acceptance of the investigation report and final determination in whole or in part. The OIG's decision must be made within 45 days of receipt of the investigation report and evidentiary record. This period of time may be extended by the OIG for good cause. The OIG shall make this decision based on the OIG's assessment of the completeness of the investigation report, and the OIG's assessment of whether the investigating entity followed reasonable procedures, including whether the Respondent had an adequate opportunity to comment on the investigation report and whether these comments were given due consideration. If the OIG decides to recommend acceptance of the results of the external investigation, in whole or in part, the OIG shall transmit a copy of the final determination, the investigation report, and the evidentiary record to the NASA Adjudication Official, and to the NASA Office of the Chief Scientist. When the OIG decides not to recommend acceptance, the OIG must initiate its own investigation.

(e) In the case of an investigation conducted by the OIG, the OIG shall transmit copies of the investigation report, including the Respondent's written comments (if any), the evidentiary record and its recommendations, to the institution, to the NASA Adjudication Official and to the NASA Office of the Chief Scientist.

(f) Upon learning of alleged research misconduct, the OIG shall identify potentially implicated awards or proposals and, when appropriate, shall ensure that program, grant, or contracting officers handling them are informed. Neither a suspicion nor allegation of research misconduct, nor a pending inquiry or investigation, shall normally delay review of proposals. Subject to paragraph (g) of this section, reviewers or panelists shall not be informed of allegations or of ongoing inquiries or investigations in order to avoid influencing reviews. In the event that an application receives a fundable rating or ranking by a review panel, funding can be deferred by the program until the completion of the inquiry or investigation.

(g) If, during the course of an OIG conducted inquiry or investigation, it appears that immediate administrative action, as described in § 1275.106, is necessary to protect public health or safety, Federal resources or interests, or the interests of those involved in the inquiry or investigation, the OIG shall inform the NASA sponsor for the research and the NASA Office of the Chief Scientist.

§ 1275.103 Role of awardee institutions.

(a) The awardee institutions have the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institutions, although NASA has ultimate oversight authority for NASA research.

(b) When an allegation of research misconduct related to NASA research is made directly to the OIG and the OIG defers to the awardee institution's inquiry or investigation, or when an allegation of research misconduct related to NASA research is made directly to the awardee institution which commences an inquiry or investigation, the awardee institution is required to:

(1) Notify the OIG if an inquiry supports a formal investigation as soon as this is determined.

(2) Keep the OIG informed during such an investigation.

(3) Notify the OIG immediately—

(i) If public health or safety is at risk;

(ii) If Federal resources, reputation, or other interests need protecting;

(iii) If research activities should be suspended;

(iv) If there is reasonable indication of possible violations of civil or criminal law;

(v) If Federal action is needed to protect the interests of those involved in the investigation; or

(vi) If the research community or the public should be informed.

(4) Provide the OIG with a copy of the investigation report, including the

recommendations made to the awardee institution's adjudication official and the Respondent's written comments (if any), along with a copy of the evidentiary record.

(5) Provide the OIG with the awardee institution's final determination, including any corrective actions taken or planned.

(c) If an awardee institution wishes the OIG to defer its own inquiry or investigation, the awardee institution shall complete any inquiry and decide whether an investigation is warranted within 60 days. It should similarly complete any investigation, adjudication, or other procedure necessary to produce a final determination, within an additional 180 days. If completion of the process is delayed, but the awardee institution wishes NASA's deferral of its own procedures to continue, NASA may require submission of periodic status reports.

(d) Each awardee institution must maintain and effectively communicate to its staff, appropriate policies and procedures relating to research misconduct, including the requirements on when and how to notify NASA.

§ 1275.104 Conduct of Inquiry by the OIG.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, the OIG may defer its inquiry or investigation until it receives the results of that external investigation. When the OIG does not receive the results within a reasonable time, the OIG shall ordinarily proceed with its own investigation.

(b) When the OIG decides to initiate a NASA investigation, the OIG must give prompt written notice to the individual or institution to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) When alleged misconduct may involve a crime, the OIG shall determine whether any criminal investigation is already pending or projected. If not, the OIG shall determine whether the matter should be referred to the Department of Justice.

(d) When a criminal investigation by the Department of Justice or another Federal agency is underway or under active consideration, the OIG shall determine what information, if any, may be disclosed to the Respondent or to NASA employees.

(e) To the extent possible, the identity of sources who wish to remain anonymous shall be kept confidential. To the extent allowed by law, documents and files maintained by the OIG during the course of an inquiry or investigation of misconduct shall be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(f) When the OIG proceeds with its own inquiry, it is responsible for ensuring that the inquiry is completed within 60 days after it is commenced. The OIG may extend this period of time for good cause.

(g) On the basis of what the OIG learns from an inquiry, and in consultation as appropriate with other NASA offices, the OIG shall decide whether a formal investigation is warranted.

§ 1275.105 Conduct of the OIG investigation of research misconduct.

(a) The OIG shall make every reasonable effort to complete a NASA research misconduct investigation and issue a report within 120 days after initiating the investigation. The OIG may extend this period of time for good cause.

(b) A NASA investigation may include:

(1) Review of award files, reports, and other documents readily available at NASA or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the Respondent to be heard.

(c) The OIG may invite outside consultants or experts to participate in a NASA investigation.

(d) During the course of the investigation, the OIG shall provide a draft of the investigation report to the Respondent, who shall be invited to submit comments. The Respondent must submit any comments within 20 days of receipt of the draft investigation report. This period of time may be extended by the OIG for good cause. Any comments submitted by the Respondent shall receive full consideration before the investigation report is made final.

(e) At the end of the investigation proceedings, an investigation report must be prepared that shall include recommended findings as to whether research misconduct has occurred. A recommended finding of research misconduct requires that:

(1) There be a significant departure from accepted practices of the relevant research community for maintaining the integrity of the research record;

(2) The research misconduct be committed intentionally, knowingly, or in reckless disregard of accepted practices; and

(3) The allegation be proven by a preponderance of evidence.

(f) The investigation report must also be transmitted with the recommendations for administrative action, when recommended findings of research misconduct are made. Section 1275.106 lists possible recommended administrative actions and considerations for use in determining appropriate recommendations.

(g) NASA OIG may elect to proceed with its administrative investigation processes in lieu of a research misconduct investigation under this part when the allegation is against a civil service employee (an intramural researcher).

§ 1275.106 Administrative actions.

(a) Listed in paragraphs (a)(1) through (a)(3) of this section are possible administrative actions that may be recommended by the investigation report and adopted by the adjudication process. They are not exhaustive, and are in addition to any administrative actions necessary to correct the research record. The administrative actions range from minimal restrictions (Group I Actions) to severe restrictions (Group III Actions), and do not include possible criminal sanctions.

(1) Group I Actions.

(i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period of time an individual, department, or institution obtain special prior approval of particular activities from NASA.

(iii) Require for a specified period of time that an institutional official other than those guilty of research misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions.

(i) Restrict for a specified period of time designated activities or expenditures under an active award.

(ii) Require for a specified period of time special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the research misconduct.

(3) Group III Actions.

(i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NASA programs for a specified period of time.

(iii) Prohibit participation of an individual as a NASA reviewer, advisor, or consultant for a specified period of time.

(b) In deciding what actions are appropriate when research misconduct is found, NASA officials should consider the seriousness of the misconduct, including, but not limited to:

(i) The degree to which the misconduct was knowing, intentional, or reckless;

(ii) Whether the misconduct was an isolated event or part of a pattern;

(iii) Whether the misconduct had a significant impact on the research

record, research subjects, or other researchers, institutions, or the public welfare.

§ 1275.107 Adjudication.

(a) The NASA Adjudication Official must review and evaluate the investigation report and the evidentiary record required to be transmitted pursuant to § 1275.102(d) and (e). The NASA Adjudication Official may initiate further investigations, which may include affording the Respondent another opportunity for comment, before issuing a decision regarding the case. The NASA Adjudication Official may also return the investigation report to the OIG with a request for further fact-finding or analysis.

(b) Based on a preponderance of the evidence, the NASA Adjudication Official shall issue a decision setting forth the Agency's findings as to whether research misconduct has occurred and recommending appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred. The NASA Adjudication Official shall render a decision within 30 days after receiving the investigation report and evidentiary record, or after completion of any further proceedings. The NASA Adjudication Official may extend this period of time for good cause.

(c) The decision shall be sent to the Respondent, to the Respondent's institution, and, if appropriate, to the Complainant. If the decision confirms the alleged research misconduct, it must include instructions on how to pursue an appeal to the NASA Appeals Official. The decision shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

§ 1275.108 Appeals.

(a) The Respondent may appeal the decision of the NASA Adjudication Official by notifying the NASA Appeals Official in writing of the grounds for appeal within 30 days after Respondent's receipt of the decision. If the decision is not appealed within the 30-day period, the decision becomes the final Agency action insofar as the findings are concerned.

(b) The NASA Appeals Official shall inform the Respondent of a final determination within 30 days after receiving the appeal. The NASA Appeals Official may extend this period of time for good cause. The final determination may affirm, overturn, or modify the decision of the NASA Adjudication Official and shall constitute the final Agency action insofar as the findings are concerned. The final determination shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

(c) Once final Agency action has been taken pursuant to paragraphs (a) or (b) of this section, the recommendations for administrative action shall be sent to the relevant NASA components for further proceedings in accordance with applicable laws and regulations.

APPENDIX TO PART 1275—RESEARCH MISCONDUCT

NASA RESEARCH DISCIPLINES AND RESPECTIVE ASSOCIATED DIRECTORATES

1. Aeronautics Research—Aeronautics Research Mission Directorate
2. Space Science Research—Science Mission Directorate
3. Earth Science Research and Applications—Science Mission Directorate
4. Biomedical Research—Human Exploration and Operations Mission Directorate
5. Fundamental Biology—Human Exploration and Operations Mission Directorate
6. Fundamental Physics—Human Exploration and Operations Mission Directorate
7. Research for Exploration Systems not covered by the disciplines above—Human Exploration and Operations Mission Directorate
8. Research for the International Space Station not covered by the disciplines above—Human Exploration and Operations Mission Directorate
9. Other engineering research not covered by disciplines above—NASA Chief Engineer
10. Other technology research not covered by disciplines above—NASA Chief Technologist

[77 FR 44441, July 30, 2012]

PARTS 1276–1299 [RESERVED]

CHAPTER VI—AIR TRANSPORTATION SYSTEM STABILIZATION

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SUBCHAPTER A—OFFICE OF MANAGEMENT AND BUDGET

PART 1300—AVIATION DISASTER RELIEF—AIR CARRIER GUARANTEE LOAN PROGRAM

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1300.23 Participation in guaranteed loans.

AUTHORITY: Title I of Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

SOURCE: 66 FR 52272, Oct. 12, 2001, unless otherwise noted.

Subpart A—General

§ 1300.1 Purpose.

This part is issued by the Office of Management and Budget, (OMB) pursuant to Title I of the Air Transportation Safety and System Stabilization Act, Public Law 107–42, 115 Stat. 230 (''Act''). Specifically, Section 102(c)(2)(B) directs OMB to issue regulations setting forth procedures for application and minimum requirements for the issuance of Federal credit instruments under section 101(a)(1) of the Act.

§ 1300.2 Definitions.

(a) *Act* means the Air Transportation Safety and System Stabilization Act, Public Law 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

(b) *Administer*, *administering* and *administration*, mean the lender's actions in making, disbursing, servicing (including, but not limited to care, preservation and maintenance of collateral), monitoring, collecting, and liquidating a loan and security.

(c) *Agent* means that lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all lenders party to a guarantee of a single loan, as is required by, or necessarily incidental to, the terms and conditions of the guarantee.

(d) *Air carrier* means an air carrier as defined in 49 U.S.C. 40102.

(e) *Applicant* means one or more air carriers applying for a Federal credit instrument issued by the Board under the program.

(f) The *Board*, for purposes of any operational and decisionmaking functions in connection with individual loan guarantees, means the voting members of the Air Transportation Stabilization Board established under Section 102 of the Act. The voting members of the Board are the Chairman of the Board of Governors of the Federal Reserve System (who is the Chairman of the Board), the Secretary of the Treasury and the Secretary of Transportation, or their designees. The Comptroller General, who is a nonvoting member, will not participate in the review, operations, or deliberations of the Board in connection with individual loan guarantees, or otherwise participate in the Board's exercise of any executive power, but may provide such audit, evaluation and other support to the Board as the Board may request, consistent with applicable auditing standards.

(g) *Borrower* means an ''Obligor,'' as defined in Section 102(a)(4) of the Act, and includes an air carrier that is primarily liable for payment of the principal of and interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(h) *Federal credit instrument*, as defined in Section 107(2) of the Act, means any guarantee or other pledge by the Board issued under the program to pledge the full faith and credit of

the United States to pay all or part of any of the principal of and interest on a loan issued by a borrower and funded by a lender.

(i) *Financial obligation,* as defined in Section 102(a)(2) of the Act, means any note, bond, debenture, or other debt obligation issued by a borrower in connection with financing under the program.

(j) *Guarantee* means the written agreement between the Board and one or more lenders, pursuant to which the Federal government guarantees repayment of a specified percentage of the principal of and/or interest on the loan. Unless otherwise specified, guarantee includes any other pledge issued under a Federal credit instrument.

(k) *Lender* means any non-Federal qualified institutional buyer, as defined in Section 102(a)(3) of the Act, that funds a financial obligation subject to a guarantee issued by the Board. With respect to a guarantee of a single loan to which more than one lender is a party, the term lender means agent.

(l) *Loan,* unless otherwise specified, includes any financial obligation (i.e., note, bond, debenture, or other debt obligation) issued by a borrower.

(m) *Loan documents* mean the loan agreement and all other instruments, and all documentation between the lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan. (References to loan documents also include comparable agreements, instruments, and documentation for other financial obligations for which a guarantee is requested or issued.)

(n) *Program* means the air carrier guarantee loan program established by section 101(a)(1) and the related provisions of Title I of the Act.

(o) *Security* means all property, real or personal, required by the provisions of the guarantee or by the loan documents to secure repayment of any indebtedness of the borrower under the loan documents or guarantee.

§ 1300.3 Supplementary regulations of the Air Transportation Stabilization Board.

(a) The regulations in this part are supplemented by the regulations of the Air Transportation Stabilization Board in part 1310 of this chapter in accordance with section 102(c)(2)(B) of the Act.

(b) This part and part 1310 of this chapter jointly govern the application procedures and the requirements for issuance of Federal credit instruments under section 101(a)(1) of the Act.

[67 FR 17258, Apr. 9, 2002]

Subpart B—Minimum Requirements and Application Procedures

§ 1300.10 General standards for Board issuance of Federal credit instruments.

(a) In accordance with section 102(c)(1) of the Act, the Board may enter into agreements with one or more borrowers to issue Federal credit instruments only if the Board determines, in its discretion and in accordance with the minimum requirements set forth in this part, that—

(1) The borrower is an air carrier for which credit is not reasonably available at the time of the transaction;

(2) The intended obligation by the borrower is prudently incurred; and

(3) Such agreement is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States.

(b) In accordance with section 102(c)(2)(A) of the Act, the Board shall enter into an agreement to issue a Federal credit instrument in such form and on such terms and conditions and subject to such covenants, representations, warranties, and requirements (including requirements for audits) as the Board determines are appropriate for satisfying the requirements of this part and any supplemental requirements issued by the Board under section 102(c)(2)(B) of the Act.

(c) In accordance with section 102(d)(1) of the Act, in entering into

agreements to issue Federal credit instruments, the Board shall, to the extent feasible and practicable and in accordance with the requirements in this part, ensure that the Federal Government is compensated for the risk assumed in making guarantees.

(d) In accordance with Section 102(d)(2) of the Act, the Board is authorized to enter into contracts under which the Federal Government, contingent on the financial success of the air carrier, would participate in the gains of the air carrier or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments, except that the Board shall not accept an equity interest in an air carrier that gives the Federal Government voting rights.

(e) In accordance with Section 104(a) of the Act, the Board may only issue a Federal credit instrument to an air carrier after the air carrier enters into a legally binding agreement with the Board regarding certain employee compensation.

§ 1300.11 Eligible borrower.

(a) An eligible borrower must be an air carrier that can demonstrate, to the satisfaction of the Board, that:

(1) It has incurred (or is incurring) losses as a result of the terrorist attacks on the United States that occurred on September 11, 2001, which may include losses due to the unavailability of credit or the decrease in demand for that air carrier's services;

(2) It is not under bankruptcy protection or receivership when the application is submitted or when the Board issues the guarantee, unless the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan;

(3) It has agreed to permit such audits and reviews prior to the issuance of a guarantee, as the Board may deem appropriate, by an independent auditor acceptable to the Board;

(4) It has agreed to permit such audits and reviews during the period the loan is outstanding and three years after payment in full of the guaranteed loan, as the Board may deem appropriate, by an independent auditor acceptable to the Board or by the Comptroller General;

(5) In conducting audits and reviews pursuant to paragraphs (a) (3) and (4) of this section, it has agreed to provide access to the officers and employees, books, records, accounts, documents, correspondence, and other information of the borrower, its subsidiaries, affiliates, financial advisers, consultants, and independent certified accountants that the Board or the Comptroller General consider necessary.

(b) Status as an eligible borrower under this section does not ensure that the Board will issue the guarantee sought or preclude the Board from declining to issue a guarantee.

§ 1300.12 Eligible lender.

(a) A lender eligible to receive a Federal credit instrument approved by the Board must be a non-Federal qualified institutional buyer as defined in Section 102(a)(3) of the Act.

(b) If more than one institution participates as a lender in a single loan for which a Federal credit instrument is requested, each one of the institutions on the application must meet the requirements to be an eligible lender. An application for a guarantee of a single loan, for which there is more than one lender, must identify one of the institutions to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the guarantee.

(c) Each lender, irrespective of any indemnities or other agreements between the lenders and the agent, shall be bound by all actions, and/or failures to act, of the agent. The Board shall be entitled to rely upon such actions and/or failures to act of the agent as binding the lenders.

(d) Status as an eligible lender under this section does not assure that the Board will issue the guarantee sought, or otherwise preclude the Board from declining to issue a guarantee.

§ 1300.13 Guarantee amount.

(a) Under Section 101(a)(1) of the Act, the Board is authorized to enter into agreements to issue Federal credit instruments that, in the aggregate, do not exceed $10 billion.

(b) The loan amount guaranteed to a single air carrier may not exceed that amount that, in the Board's sole discretion, the air carrier (or its successor) needs in order for it to provide commercial air services.

§ 1300.14 Guarantee percentage.

A guarantee issued by the Board must be less than 100 percent of the amount of principal and accrued interest of the loan guaranteed.

§ 1300.15 Loan terms.

(a) A loan guaranteed under the program shall be due and payable in full no later than seven years from the date on which the first disbursement of the loan is made.

(b) Loans guaranteed under the program must bear a rate of interest determined by the Board to be reasonable. In determining the reasonableness of an interest rate, the Board shall consider the percentage of the guarantee, any collateral, other loan terms, and current average yields on outstanding obligations of the United States with maturity comparable to the term of the loan guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate on such loan to be unreasonable.

(c) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a guarantee to the lender.

§ 1300.16 Application process.

(a) Applications are to be submitted by the borrower. Borrowers may submit applications to the Board any time after October 12, 2001 through June 28, 2002. All applications must be received by the Board no later than 5 p.m. EDT, June 28, 2002, in the Board's offices. Borrowers should submit an original application and four copies. Applications will not be accepted via facsimile machine transmission or electronic mail. No application will be accepted for review if it is not received by the Board on or before June 28, 2002.

(b) Applications shall contain the following:

(1) A completed Form ''Application for Air Carrier Guaranteed Loan';

(2) All loan documents that will be signed by the lender and the borrower, if the application is approved, including all terms and conditions of, and security or additional security (if any), to assure the borrower's performance under, the loan;

(3) A certification by the borrower that the borrower meets each of the requirements of the program as set forth in the Act, the regulations in this part, and any supplemental requirements issued by the Board;

(4) A certification by the lender that the lender meets each of the requirements of the program as set forth in the Act, the regulations in this part, and any supplemental requirements issued by the Board, and that the lender will provide the loan under the terms outlined in the loan documents if the Board approves the requested guarantee;

(5) A statement that the borrower is not under bankruptcy protection or receivership when the application is submitted, unless the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan;

(6) Consolidated financial statements of the borrower for the previous five years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(7) Copies of the financial evaluations and forecasts concerning the air carrier's air service operations that were prepared by or for the air carrier within the three months prior to September 11, 2001;

(8) The borrower's business plan on which the loan is based that includes the following:

(i) A description of how the loan fits within the borrower's business plan, the purposes for which the borrower will use the loan, and an analysis showing that the loan is prudently incurred. If loan funds are to be used to purchase

an existing firm (or the substantial assets of an existing firm), the business plan of the combined entity shall contain a discussion of the way in which any required regulatory or judicial approvals will be obtained, including antitrust approval for any proposed acquisition;

(ii) A discussion of a complete cost accounting and a range of revenue, operating cost, and credit assumptions;

(iii) A discussion of the financing plan on which the loan is based, showing that the operational needs of the borrower will be met during the term of the plan;

(iv) An analysis demonstrating that, at the time of the application, there is a reasonable assurance that the borrower will be able to repay the loan according to its terms, and a complete description of the operational and financial assumptions on which this demonstration is based;

(v) A discussion of the borrower's five-year history and five-year projection for revenue, cash flow, average realized prices, and average realized operating costs and a demonstration that the borrower will be able to continue operations if the requested guarantee is approved; and

(vi) If appropriate, a description of a plan to restructure the borrower's obligations, contracts, and costs. In preparing this description, the borrower shall jointly develop, with its existing secured and unsecured creditors, employees, or vendors, an agreed-upon plan to restructure the borrower's obligations, contracts and costs and incorporate this into the business plan submitted;

(9) A description of the losses that the borrower incurred (or is incurring) as a result of the terrorist attacks on the United States that occurred on September 11, 2001, including losses due to the unavailability of credit on reasonable terms or a decrease in demand for the air carrier's services;

(10) An analysis that demonstrates that the issuance of the guaranteed loan is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States and that credit is not reasonably available at the time of the transaction;

(11) A description of all security (if any) for the loan, including, as applicable, current appraisals of real and personal property, copies of any appropriate environmental site assessments, and current personal and corporate financial statements of any guarantors for the same period as required for the borrower. Appraisals of real property shall be prepared by State licensed or certified appraisers, and be consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation. Financial statements of guarantors shall be prepared by independent certified public accountants;

(12) If appropriate, a description of the Federal government's ability to participate, contingent on the financial success of the borrower, in the gains of the borrower or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments; and

(13) Any other information requested by the Board.

(c) The collections of information in this section and elsewhere in this part that are subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) have been approved by OMB and assigned control number 0348–0059. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 1300.17 Application evaluation.

(a) Eligibility screening. Applications will be reviewed to determine whether the lender and borrower are eligible, the information required under § 1300.16(b) is complete, and the proposed loan complies with applicable statutes and regulations. The Board may at any time reject an application that does not meet these requirements.

(b) Evaluation criteria. Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review by the Board. In addition to the general standards for Board issuance of Federal credit instruments set forth in

§ 1300.10, the Board shall consider the following evaluation factors:

(1) Reasonable assurance that the borrower will be able to repay the loan by the date specified in the loan document, which shall be no later than seven years from the date on which the first disbursement of the loan is made;

(2) The adequacy of the proposed provisions to protect the Federal Government, including sufficiency of any security provided by the borrower and the percentage of guarantee requested;

(3) The ability of the lender to administer the loan in full compliance with the requisite standard of care. In making this determination, the Board will assess:

(i) The lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of other institutions;

(ii) Whether the lender possesses the ability to administer the loan, including its experience with loans to air carriers; and

(iii) Any other matter the Board deems material to its assessment of the lender; and

(4) The ability of the borrower to demonstrate, to the Board's satisfaction, one or more of the following criteria. The Board shall give preference to applications that satisfy one or more of these criteria, giving greater preference to those applications that meet the greatest number of these criteria, as follows:

(i) A demonstration that the air carrier has presented a plan demonstrating that its business plan is financially sound;

(ii) A demonstration of greater participation in the loan by non-Federal entities;

(iii) A demonstration of greater participation in the loan by private entities, as opposed to public non-Federal entities;

(iv) A demonstration that the proposed instruments would ensure that the Federal Government will, contingent on the financial success of the air carrier, participate in the gains of the air carrier and its security holders;

(v) A demonstration of concessions by the air carrier's security holders, other creditors, or employees that will improve the financial condition of the air carrier in a manner that will enable it to repay the loan in accordance with its terms and provide commercial air services on a financially sound basis after repayment;

(vi) A demonstration that guaranteed loan proceeds will be used for a purpose other than the payment or refinancing of existing debt;

(vii) A demonstration that the proposed instruments contain financial structures that minimize the Federal government's risk and cost associated with making loan guarantees. Examples include, but are not limited to, requests for guarantees that contain the following:

(A) A maturity period that is less than the maximum permitted under the rules in this part;

(B) Pledges of collateral;

(C) Agreements by the borrower's parent or other entities to reimburse the Federal government for any payments that the Federal government may make under the guarantee;

(D) A grant to the Federal government of favorable priority in the event of bankruptcy reflecting other creditors' agreement to subordinate their debts as a condition of the loan guarantee;

(E) Limitation of the borrower's issuance of dividends and/or the borrower's payments to its parent or subsidiaries or related companies;

(F) Limitation of the borrower's ability to incur additional debt, and/or the borrower's ability to incur capital expenditures, beyond that set forth in the business and financial plans that the Borrower submitted with the application;

(G) A demonstration of reasonable liquidity;

(H) A demonstration of favorable debt ratios; and

(I) A demonstration that any proceeds raised from private sector financing subsequent to disbursement of the federally guaranteed loan be used to repay the federally guaranteed loan.

(c) No guarantee will be made if either the borrower or lender has an outstanding delinquent Federal debt, including tax liabilities, until:

(1) The delinquent debt has been paid in full;

(2) A negotiated repayment schedule is established; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt are made.

(d) Decisions by the Board. The Board shall approve or deny applications received on or before June 28, 2002, in a timely manner as such applications are received. The Board may limit the amount of a loan guarantee made to initial applicants to ensure that sufficient funds remain available for subsequent applicants. The Board shall notify the borrower in writing of the approval or denial of an application. Approvals for loan guarantees shall be conditioned upon compliance with § 1300.18.

§ 1300.18 Issuance of the guarantee.

(a) The Board's decisions to approve any application for a guarantee under § 1300.17 is conditioned upon:

(1) The lender and borrower obtaining any required regulatory or judicial approvals;

(2) Evidence showing, to the Board's satisfaction, that the lender and borrower are legally authorized to enter into the loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the loan documents and any related instruments, in form and substance satisfactory to the Board, and the guarantee, all properly executed by the lender, borrower, and any other required party other than the Board; and

(4) No material adverse change in the borrower's ability to repay the loan or any of the representations and warranties made in the application between the date of the Board's approval and the date the guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of guarantee if the Board determines that the lender or the borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation required by this section, will the Board sign and deliver the guarantee.

(d) A borrower receiving a loan guaranteed by the Board under this program shall pay an annual fee, in an amount and payable as determined by the Board. At the time that the guarantee is issued, the Board shall ensure that this annual fee will escalate for each year that the loan is outstanding and that such annual escalation reflects the borrower's potential ability to obtain credit in the private credit markets, in addition to any other factors the Board may deem appropriate.

§ 1300.19 Assignment or transfer of loans.

Neither the loan documents nor the guarantee of the Board, or any interest therein, may be modified, assigned, conveyed, sold or otherwise transferred by the lender, in whole or in part, without the prior written approval of the Board.

§ 1300.20 Lender responsibilities.

The lender shall have such obligations and duties to the Board as are set forth in the guarantee.

§ 1300.21 Guarantee.

The Board shall adopt a form of guarantee to be used by the Board under the program. Modifications to the provisions of the form of guarantee must be approved and adopted by the Board.

§ 1300.22 Termination of obligations.

The Board shall have such rights to terminate the guarantee as are set forth in the guarantee.

§ 1300.23 Participation in guaranteed loans.

(a) Subject to paragraph (b) of this section, a lender may distribute the risk of a portion of a loan guaranteed under the program by sale of participations therein if:

(1) Neither the loan note nor the guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(2) The lender remains solely responsible for the administration of the loan; and

(3) The Board's ability to assert any and all defenses available to it under the guarantee and the law is not adversely affected.

(b) The following categories of entities may purchase participations in loans guaranteed under the program:

(1) Eligible lenders;

(2) Private investment funds and insurance companies that do not usually invest in commercial loans;

(3) Air Carrier company suppliers or customers, who are interested in participating as a means of commencing or solidifying the supplier or customer relationship with the borrower; or

(4) Any other entity approved by the Board on a case-by-case basis.

SUBCHAPTER B—AIR TRANSPORTATION STABILIZATION BOARD

PART 1310—AIR CARRIER GUARANTEE LOAN PROGRAM ADMINISTRATIVE REGULATIONS AND AMENDMENT OR WAIVER OF A TERM OR CONDITION OF GUARANTEED LOAN

Sec.
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AUTHORITY: Title I of Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

SOURCE: 67 FR 17259, Apr. 9, 2002, unless otherwise noted.

§ 1310.1 Purpose and scope.

This part is issued by the Air Transportation Stabilization Board pursuant to Section 102(c)(2)(B) of the Air Transportation Safety and System Stabilization Act, Public Law 107–42, 115 Stat. 230 (Act). This part describes the Board's authorities, organizational structure, the rules by which the Board takes actions, and procedures for public access to Board records.

§ 1310.2 Composition of the Board.

The Board consists of the Chairman of the Board of Governors of the Federal Reserve System or the designee of the Chairman, who acts as Chairman of the Board, the Secretary of the Treasury or the designee of the Secretary, the Secretary of Transportation or the designee of the Secretary, and the Comptroller General of the United States or the designee of the Comptroller General, who serves as a nonvoting member. The Comptroller General of the United States or the designee of the Comptroller General, who serves as a nonvoting member, shall not be involved in any of the Board's discussions or deliberations in connection with individual loan guarantee applications.

§ 1310.3 Authority of the Board.

Pursuant to the provisions of the Act, the Board is authorized to guarantee loans provided to airlines by eligible lenders in accordance with the procedures, rules, and regulations established by the Board, to make the determinations authorized by the Act, and to take such other actions as necessary to carry out its functions specified in the Act.

§ 1310.4 Offices.

The principal offices of the Board are at 1120 Vermont Avenue, NW., Suite 970, Washington, DC 20005.

§ 1310.5 Meetings and actions of the Board.

(a) *Place and frequency.* The Board meets, on the call of the Chairman, in order to consider matters requiring action by the Board. The time and place for any such meeting shall be determined by the members of the Board.

(b) *Quorum and voting.* Two voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by a majority vote of the voting members. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(c) *Agenda of meetings.* As a general rule, an agenda for each meeting shall be distributed to members of the Board at least 48 hours in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

(d) *Minutes.* The Chief Administrative Officer shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the

Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(e) *Use of conference call communications equipment*. Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes, except that the Comptroller General of the United States or the designee of the Comptroller General, who serves as a nonvoting member, shall not participate in any of the Board's discussions or deliberations in connection with individual loan guarantee applications. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(f) *Actions between meetings*. When, in the judgment of the Chairman, it is desirable for the Board to consider action without holding a meeting, the relevant information and recommendations for action may be transmitted to the members by the Chief Administrative Officer and the voting members may communicate their votes to the Chairman in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes. If a voting member believes the matter should be considered at a meeting, the member may so notify the Chief Administrative Officer and the matter will be scheduled for consideration at a meeting.

(g) *Delegations of authority*. The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to the Executive Director, the Legal Counsel, or the Chief Administrative Officer, to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to delegated authority has the effect of an action taken by the Board.

§ 1310.6 Staff.

(a) *Executive Director*. The Executive Director advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *Legal Counsel*. The Legal Counsel provides legal advice relating to the responsibilities of the Board and performs such other duties as the Executive Director may require.

(c) *Chief Administrative Officer*. The Chief Administrative Officer sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board and performs such other duties as the Executive Director may require.

§ 1310.7 Communications with the Board.

Communications with the Board shall be conducted through the staff of the Board.

§ 1310.8 Freedom of Information Act.

While the Board is not part of the Department of the Treasury, the Board follows the regulations promulgated by the Department of the Treasury at subpart A (''Freedom of Information Act'') of part 1 (''Disclosure of Records'') of title 31 (''Money and Finance: Treasury'') of the Code of Federal Regulations (CFR). The procedures of 31 CFR 1.1 through 1.7 shall be followed for requesting access to records maintained by the Board, and processing such requests. Any reference in 31 CFR 1.1 through 1.7 to the ''Department of the Treasury,'' the ''Department'' or to a ''bureau,'' shall be construed to refer to the Board. In the event that the regulations at subpart A of part 1 of title 31 of the CFR subsequently are amended

by the Department of the Treasury, the Board will follow those amended regulations. The following additional information is provided to implement 31 CFR 1.1 through 1.7 with respect to the Board.

(a) *Public reading room.* The public reading room for the Board is the Treasury Department Library. The Library is located in the Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202–622–0990.

(b) *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Board will be made by the Chief Administrative Officer or the designate of such official. Requests for records should be addressed to: Freedom of Information Request, Air Transportation Stabilization Board, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(c) *Administrative appeal of initial determination to deny records.* (1) Appellate determinations under 31 CFR 1.5(i) with respect to records of the Board will be made by the Executive Director, or the delegate of such official.

(2) Appellate determinations with respect to requests for expedited processing shall be made by the Executive Director or the delegate of such official.

(3) Appeals should be addressed to: Freedom of Information Appeal, Air Transportation Stabilization Board, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(d) *Delivery of process.* Service of process will be received by the Legal Counsel of the Board or the delegate of such official and shall be delivered to the following location: Legal Counsel, Air Transportation Stabilization Board, 1120 Vermont Avenue, NW., Suite 970, Washington, DC 20005.

§ 1310.9 Restrictions on lobbying.

(a) While the Board is not part of the Department of the Treasury, the regulations promulgated by the Department of the Treasury at part 21 (''New Restrictions on Lobbying'') of title 31 (''Money and Finance: Treasury'') of the Code of Federal Regulations (CFR), including the appendices thereto, are applicable 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. The regulations promulgated by the Department of the Treasury at 31 CFR part 21 also are applicable to a request for, or receipt of, any Federal contract, grant, loan or cooperative agreement; and to a request for, or receipt of, a commitment providing for the United States to insure or guarantee a loan. These terms are defined in 31 CFR 21.105.

(b) In the event that the regulations at part 21 of title 31 of the CFR subsequently are amended by the Department of the Treasury, the Board will follow those amended regulations.

§ 1310.10 Governmentwide debarment and suspension.

While the Board is not part of the Department of the Treasury, the regulations promulgated by the Department of the Treasury at subpart A (''General''), subpart B (''Effect of Action''), subpart C (''Debarment''), subpart D (''Suspension''), and subpart E (''Responsibilities of GSA, Agency and Participants'') of part 19 (''Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements For Drug-Free Workplace (Grants)'') of title 31 (''Money and Finance: Treasury'') of the Code of Federal Regulations (CFR) are applicable to the Board. Any reference in 31 CFR part 19 to the ''Department of the Treasury'' or the ''Department'' shall be construed to refer to the Board. In the event that the regulations at subpart A, B, C, D or E of part 19 of title 31 of the CFR subsequently are amended by the Department of the Treasury, the Board will follow those amended regulations.

§ 1310.11 Regulations of the Office of Management and Budget.

(a) The regulations in this part supplement the regulations of the Office of Management and Budget in part 1300 of this chapter in accordance with section 102(c)(2)(B) of the Act.

(b) This part and part 1300 of this chapter jointly govern the application procedures and the requirements for issuance of Federal credit instruments under section 101(a)(1) of the Act.

§ 1310.15 Amendment or Waiver of a term or condition of a guaranteed loan.

The Board may, in its discretion, charge the borrower a fee, in an amount and payable as determined by the Board, for each amendment to, or waiver of, any term or condition of any guaranteed loan document or related instrument approved by the Board.

[70 FR 10037, Mar. 2, 2005]

§ 1310.20 Amendments.

The procedures in this part may be adopted or amended, or new procedures may be adopted, only by majority vote of the Board. Authority to adopt or amend these procedures may not be delegated.

PARTS 1311–1399 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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1203.408 Heading revised; introductory text, (a) and (d) amended; (e) added 5118
1203.409 (a) revised; (c) amended 5118
1203.410 (a), (c), (d) and (e) revised; (f) and (g) removed 5119
1203.412 (a)(3) and (5) revised; (b) amended 5119
1203.500 Revised 5119
1203.601 Amended 5120
1203.602 Revised 5120
1203.603 Revised 5120
1203.604 (a), (b), (c)(2), (d)(2), (3), (4), (e)(1), (3), (5) and (g)(2) revised; (c)(1), (d)(1) and (e)(2) amended 5120
1203.700—1203.703 (Subpart G) Removed 5121
1203.800 Revised 5121
1203.801 Revised 5121
1203.802 Revised 5121
1203.803 Added 5121
1203.804 Added 5121
1203.900 Revised 5122
1203.901 (d) added 5122
1203.1000—1203.1003 (Subpart J) Added 5122
1203a Authority citation revised 5123
1203a.100 (a) and (b) amended 5123
1203a.101 (a) and (b) amended; (a)(1), (2) and (3) revised 5123
1203a.102 (a)(1) introductory text revised; (a)(1)(iii), (2), (3)(i) introductory text, (*a*), (*b*), (*c*), (ii), (b) introductory text, (1), (4) and (c) amended 5124
1203a.103 (a)(1), (2), (3) and (b) amended 5124

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1203a.104 (a) and (b) amended 5124
1203a.105 Amended 5124
1203b Authority citation revised 5124
1203b.100 Amended 5124
1203b.101 Amended 5124
1203b.102 Amended 5125
1203b.103 (a)(1), (2), (b)(2) and (c) amended 5125
1203b.104 (a) revised; (c) removed; (d) redesignated as new (c); (b) and new (c) amended 5125
1203b.105 Amended 5125
1203b.106 Revised 5125
1203b.107 (a)(1), (c) introductory text and (1) through (4) amended 5125
1203b.108 (b), (c) introductory text, (2), (d) introductory text, (1), (2) and (e) amended 5125
1203b.109 Amended 5125
1204.401 (a) revised; (b) amended; eff. 2-21-14 77353
1204.402 Revised; eff. 2-21-14 77353
1204.403 Revised; eff. 2-21-14 77353
1204.508 Revised; eff. 2-14-14 76058
1204.1000—1204.1006 (Subpart 10) Authority citation revised 5125
1204.1000 Amended 5125
1204.1001 (a) and (b) amended 5126
1204.1002 Amended 5126
1204.1003 (a) introductory text, (1), (2), (b), (c), (d) and (e) amended 5126
1204.1004 Amended 5126
1204.1005 (a) revised; (b) and (2) amended 5126
1204.1006 Amended 5126
1209.302 Amended 20423
1209.300—1209.305 (Subpart 3) Revised 20423
1212 Authority citation correctly revised 8963
1212.201 Heading and (c)(1) correctly revised; (f) correctly redesignated as (g); new (f) correctly added 8963
1212.704 (a) correctly amended 8964
1230 Revised; eff. 2-14-14 76059

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1232 Revised; eff. 2-14-14 76059

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1201 Authority citation revised 18444
1201.100 Amended 18444
1201.200 Revised 18444
1201.300 Revised 18444
1201.400—1201.402 (Subpart 4) Removed 18444
1204.501 Amended 11319
1204.503 (b), (e)(1), (2), (f)(1), (3)(i)(D), (ii), (g), (h) and (i) amended 11319
1204.504 (a), (d)(1), (2), (e)(1), (3)(ii)(B), (iii), (f), (g) and (h) amended 11320
1204.505 (b) amended 11320
1204.509 (a) amended 11320
1204.1100—1204.1104 (Subpart 11) Added 54903
1206 Revised 46678
1214 Authority citation revised 7392
1214.500—1214.505 (Subpart 1214.5) Removed 7392
1260 Authority citation revised 21125
Removed; interim 76076
1260.4 (b)(2) revised 67349
1260.10 (b)(1)(iv) added 67349
1260.14 (e) added 67349
1260.77 Removed 21125
1267 Removed 56488
1273 Authority citation revised 21126
Removed; interim 76076
1273.50 Removed 21126
1273.51 Removed 21126
1274 Authority citation revised 21126, 56488
1274.803 Removed 21126
1274.804 Removed 21126
1274.927 Revised 56488