

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**14 CFR Parts 1260 and 1274****NASA Grants and Cooperative Agreements**

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule revises NASA's grant and cooperative agreement regulations in order to clarify and amplify administrative requirements. Revisions have been made to reduce administrative requirements on grant and cooperative agreement recipients and ensure that uniform policies are followed by NASA centers.

EFFECTIVE DATE: October 19, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Lupis, NASA Headquarters, Code HS, Washington, DC 20546, telephone: (202) 358-0462; e-mail: jlupis@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

NASA is adopting as final, with changes, the proposed rule published in the **Federal Register** (64 FR 50334-50388, September 16, 1999) that revises the NASA Grant and Cooperative Agreement Handbook, 14 CFR parts 1260 and 1274. A total of 10 organizations submitted comments in response to the proposed rule. All comments were considered in the development of this final rule. Editorial and administrative changes are also included in this final rule. Changes made to this final rule include clarification of policies in the following areas: Procedures for acquisition of property by grant recipients, procedures for no-cost grant extensions, policies on patent rights and invention and reporting rights, timeframes and procedures for closeout of grant files, situations requiring resource contributions for grants and cooperative agreements with commercial firms, procedures for making payments to commercial firms, requirements for annual civil rights certifications, performance of research with foreign organizations on a no-exchange-of-funds basis, and termination procedures. All the revisions in this final rule are considered administrative or editorial and do not involve a significant change in Agency policy.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601 *et seq.* The revisions made under this final rule are limited to administrative changes to the grant and cooperative agreement award and administration process, and other changes (e.g. vesting of title to property to grant recipients) will not have a significant economic impact.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies to this final rule, in that it incorporates a new policy requiring Central Contractor Registration (CCR) for grant and cooperative agreement recipients. An Office of Management and Budget (OMB) approval for data collection has been approved under OMB Control Number 2700-0097.

List of Subjects in 14 CFR Parts 1260 and 1274

Grant Programs—Science and Technology

R. Scott Thompson,

Acting Associate Administrator for Procurement.

Proposed Rule Adopted as Final Rule With Changes

Accordingly, 14 CFR Chapter V is amended as follows:

1. Part 1260 is revised to read as follows:

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Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

Subpart A—General

§ 1260.1 Authority.

(a) The National Aeronautics and Space Administration (NASA) awards grants and cooperative agreements under the authority of 42 U.S.C. 2473(c)(5), the National Aeronautics and Space Act. This part 1260 is issued under the authority of 42 U.S.C.

2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

(b) The Office of Management and Budget (OMB) approved information collection under the Paperwork Reduction Act and assigned OMB control numbers 2700–0047, Property Management and Control; 2700–0048, Patents; 2700–0049, Financial Management and Control; and 2700–0097, Central Contractor Registration.

§ 1260.2 Purpose.

(a) This subpart A of the NASA Grant and Cooperative Agreement Handbook (also subpart A of 14 CFR part 1260), provides supplemental NASA policies that clarify and amplify government-wide regulations for awarding and administering grants and cooperative agreements with educational and non-profit organizations. The government-wide regulations that this subpart supplements are set forth in OMB Circular A–110 “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.” (NASA has adopted OMB Circular A–110 as subpart B of this part 1260.)

(b) As required by the Office of Management and Budget (OMB), NASA has also adopted the standards set forth in OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Organizations.

§ 1260.3 Definitions.

(a) The following definitions are a supplement to the subpart B definitions set forth at § 1260.102. Additional definitions applicable to specific categories of grants and cooperative agreements are set forth at 14 CFR 1273.3 and 14 CFR 1274.102.

(b) Throughout subpart A to this part 1260, the term “grant” includes “cooperative agreement” unless otherwise indicated.

Administrative grant officer means a Federal employee delegated responsibility for grant administration; e.g., a NASA grant officer who has retained grant administration responsibilities, or an Office of Naval Research (ONR) grant officer delegated grant administration by a NASA grant officer.

Amendment means any document used to effect modifications to grants and cooperative agreements. Amendments may be issued unilaterally at the discretion of the grant officer.

Commercial firm means any corporation, trust or other organization which is organized primarily for profit.

Effective date means the date work can begin, which could be earlier or later than the date of signature on a basic award or modification.

Expenditures made prior to award of a grant are incurred at the recipient's risk.

Expiration date means the date of completion specified in the grant, after which expenditures may not be charged against the grant except to satisfy obligations to pay allowable costs committed on or before that date.

Historically Black Colleges and Universities means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority educational institution means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 637.4.

Non-profit organization means an organization that qualifies for the exemption from taxation under section 501 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 501.

Progress report means a concise statement of work accomplished during the report period (see §§ 1260.22 and 1260.75(b)(3)).

Recipient acquired equipment means equipment purchased or fabricated with grant funds by a recipient for the performance of work under its grant.

Small business concern means a concern, including its affiliates, which is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business concern means a small business concern owned and controlled by individuals who are both socially and economically disadvantaged and meets the criteria set forth at 13 CFR part 24.

Summary of research means a document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed.

Women-owned small business concern means a small business concern that is at least 51 percent owned by women who are U.S. citizens and who also control and operate the business (15 U.S.C. 637(d)).

§ 1260.4 Applicability.

(a) Subparts A and B of this part 1260 establish policies and procedures for grants and cooperative agreements awarded by NASA to institutions of higher education, hospitals, and other non-profit organizations.

(b) Subject to the special considerations in this paragraph,

subparts A and B of this part 1260 are also applicable to NASA grants and cooperative agreements awarded to commercial firms which do not involve cost sharing. (This does not prohibit voluntary cost sharing.) When the commercial firm is expected to receive substantial compensating benefits for performance of the work, resource contributions are required for the award of a grant or cooperative agreement. For policies on cooperative agreements with commercial organizations requiring resource contributions by the Recipient, see 14 CFR part 1274.

(1) The allowability of costs incurred by commercial firms is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

(2) NASA does not allow for payment of profit or fee to commercial firms under grant awards.

(3) When applying the policies set forth under § 1260.74, the grant officer shall vest title to any equipment purchased under the grant with the Government. The special condition at § 1260.67, Equipment and Other Property Under Grants With Commercial Firms, shall be incorporated into all grants with commercial firms in place of the provision at § 1260.27, Equipment and Other Property.

(4) Due to differing NASA patent policies applicable to large businesses, special conditions at § 1260.57, New Technology, and § 1260.58, Designation of New Technology Representative and Patent Representative, shall be incorporated into all grants with commercial firms other than those with small businesses, in place of the provision at § 1260.28, Patent Rights. Grants with small businesses should retain the § 1260.28 provision.

(5) Payments under grants with commercial firms will be made based on incurred costs. NASA Form 272 is not required. Commercial firms will be required to submit invoices on a no more than quarterly basis. Payments to be made on a more than quarterly basis require the written approval of the grant officer. The center finance office should also be informed when payments are to be made on other than a quarterly basis. The special condition at § 1260.68, Invoices and Payments Under Grants With Commercial Firms, shall be incorporated into all grants with commercial firms in place of the provision at § 1260.26, Financial Management.

(6) Payments will be made to commercial firms via electronic funds transfer. The special condition at § 1260.69, Electronic Funds Transfer

Payment Method, shall be incorporated into all grants with commercial firms.

(7) Delegation of grant administration functions consistent with the policies set forth at § 1260.70 (*i.e.*, property administration and closeout are to be delegated) will be made to the cognizant field office of the Defense Contract Management Agency instead of to the Office of Naval Research. Delegations will be made using NASA Form 1674, Letter of Delegation, for the Administration of Grants and Cooperative Agreements (Exhibit F to subpart A of this part 1260, available at the address given in Exhibit F). Cognizant offices for performing administration under individual grants are set forth in the "DoD Directory of Contract Administration Services Components," which is available on the internet at: <http://www.dcmc.hq.dla.mil/casbook/casbook.htm>

§ 1260.5 Amendment.

This part 1260 will be amended by publication of changes in the **Federal Register**. Changes will be issued as Grant Notices and incorporated into the official version of the handbook located at the internet web site.

§ 1260.6 Publication.

The official site for accessing the NASA Grant and Cooperative Agreement Handbook, including current Grant Notices, is on the internet at: <http://ec.msfc.nasa.gov/hq/grcover.htm>

§ 1260.7 Deviations.

(a) A deviation is required for any of the following:

(1) When a prescribed provision (but not a special condition) set forth verbatim in this part 1260 is modified or omitted.

(2) When a provision is set forth in this part 1260, but not for use verbatim, and the Center substitutes a provision which is inconsistent with the intent, principle, and substance of the provision.

(3) When a form prescribed by this part 1260 is altered or another form is used in its place.

(4) When limitations, imposed by this handbook upon the use of a grant provision, form, procedure, or any other grant action, are changed.

(5) When a form is created for recipient use that constitutes a "Collection of Information" within the meaning of the Paperwork Reduction Act (44 U.S.C. 35) and its implementation in 5 CFR part 1320.

(b) Requests for authority to deviate from this part 1260 shall be submitted to the Office of Procurement, NASA

Headquarters, Procurement Operations Division (HS). Requests, signed by the procurement officer, shall contain:

(1) A full description of the deviation, the circumstances in which it will be used, and identification of the requirement from which a deviation is sought;

(2) The rationale for the request, pertinent background information, and the intended effect of the deviation;

(3) The name of the recipient, identification of the grant affected, and the dollar value;

(4) A statement as to whether the deviation has been requested previously, and, if so, details of that request; and

(5) A copy of legal counsel's concurrence or comments.

(c) Where it is necessary to obtain a deviation on OMB Circular A-110 (subpart B of this part 1260), Code HS will process all necessary documents in accordance with § 1260.104.

Pre-Award Requirements

§ 1260.10 Proposals.

(a) Consistent with 31 U.S.C. 6301(3), NASA's policy is to use competitive procedures to award grants whenever possible. A grant can result from:

(1) A proposal submitted in response to a Broad Agency Announcement (BAA) such as a NASA Research Announcement (NRA) or an Announcement of Opportunity (AO), a Cooperative Agreement Notice (CAN), an Agencywide program announcement such as the Graduate Student Research Program, or other forms of announcements approved by the Associate Administrator for Procurement (HS). NRA's are described in the NASA FAR Supplement (NFS) 48 CFR 1835.016. AO's are described in 48 CFR part 1872.

(2) An *Unsolicited Proposal* for new and innovative ideas. Guidance on the submission of unsolicited proposals is contained in the Federal Acquisition Regulation (FAR) 48 CFR subpart 15.6 and (NFS) 48 CFR subpart 1815.6. The synopsis requirement in FAR Part 5, however, does not apply to the grant process. Contact with NASA technical personnel prior to proposal submission is encouraged to determine if preparation of a proposal is warranted. These discussions should be limited to understanding NASA research needs and do not jeopardize the unsolicited status of any subsequently submitted proposal.

(b) The proposal shall contain a detailed narrative description of the work to be undertaken, including the objectives of the project and the applicant's plan for carrying it out.

(1) All proposals shall include budget data as prescribed in the Budget Summary (Exhibit A to subpart A of this part 1260, available at the address given in Exhibit A). Narrative detail must support the proposed budget as required in Exhibit A.

(i) The recipient institution is responsible for ensuring that costs charged are allowable, allocable, and reasonable under the applicable cost principles governed by OMB Circular No. A-21 or A-122. For other details see § 1260.127.

(ii) Subject to applicable cost principles, facilities and administrative cost rates are negotiated between recipients and the cognizant agencies assigned under OMB Circular No. A-21. NASA is required to apply the applicable negotiated rate for all grants awarded to the recipient.

(iii) NASA may accept cost sharing when voluntarily offered. For further guidance see § 1260.123. For grants and cooperative agreements with commercial organizations that involve costs sharing, see 14 CFR part 1274. The amount of cost sharing will not be a factor in determining whether to select a proposal for award. However, recipients may be requested to secure nonfederal matching funds equal to the program portion of training and education grants. In accordance with NASA policy to foster continuity of research, multiple year grant proposals are encouraged, where appropriate, for a period generally up to three years. Proposals for multiple year grants shall describe the entire research project and include a complete budget for year one and separate estimates for each subsequent year.

(2) A Taxpayer Identification Number (TIN) must be included with the address listed on the proposal. If an award is made, advance payments cannot be made without a TIN (31 U.S.C. 7702(c)(1)).

(3) 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 grant 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: 800-841-4431, commercial: 696-961-5757.

(c)(1) Grant officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a grant or cooperative agreement.

(2) Each new proposal shall include a certification for debarment and suspension under the requirements of 14 CFR 1265.510 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) Annually, recipients must furnish assurances on NASA Form 1206 of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1253.

§ 1260.11 Evaluation and selection.

(a) Technical evaluation of proposals will be conducted by the cognizant NASA technical office and may be based on peer reviews.

(b) Under NRA's, AO's, other BAA's, and CAN's, the selecting official will furnish documentation requested by the grant officer, (including a copy of the NRA, selection statement, and peer review evaluation if requested), to confirm that the award is being made as a result of a selection under a NRA, AO, other BAA, or CAN. The technical office will forward to the grant office a completed award package, including a funded procurement request, technical evaluation of the proposed budget, and other support documentation, at least 29 days prior to the requested award date, or before the expiration of the funded period in the case of the renewal of an existing effort.

(c) If a proposal is not selected, the proposer will be notified by the selecting official in accordance with the procedures set forth in the NRA, AO, CAN, or BAA.

(d) Unsolicited proposals will be evaluated in accordance with the following procedure:

(1) Evaluations of unsolicited proposals to be awarded as grants or cooperative agreements will be conducted using the same criteria used for reviewing unsolicited proposals to be awarded as contracts, as set forth at FAR subpart 15.6 and (NFS) 48 CFR subpart 1815.6. Normally, unsolicited proposals are accepted to perform discrete projects with defined anticipated outcomes and completion dates. An unsolicited proposal that results in a grant or cooperative agreement with no defined end date, and which requires subsequent

submission of follow-on unsolicited proposals to ensure continuation of the effort, should be closely reviewed to ensure that it meets the FAR definition for a valid unsolicited proposal.

(2) An unsolicited proposal recommended for acceptance shall be supported by a Justification for Acceptance of an Unsolicited Proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. However, this review and concurrence is not required for technical officers at a division chief or higher level. The grant officer's signature on the award document will indicate approval of the JAUP.

(3) NASA will notify in writing organizations that submit unsolicited proposals that will not be funded. Method of notification is at the discretion of the grant officer. Proposals will be returned only when requested. Agency procedures for handling unsolicited proposals are specified at (NFS) 48 CFR 1815.606.

(e) For awards made non-competitively, written justifications for equipment or travel will be submitted by the technical office for grant officer approval when more than half of the proposed budget is for equipment or travel and associated indirect cost. The justification shall describe the extent to which the equipment or travel is necessary. The grant officer's signature on the award will indicate approval of the justification.

(f) The evaluation of the proposal budget will conform to the following procedure:

(1) The technical officer will review the proposer's estimated cost for conformance to program requirements and fund availability. The results of this review shall be recorded in Column B of the proposed Budget Summary Form (Exhibit A to subpart A of this part 1260, available at the address given in Exhibit A). New budgets are not required when the program office recommended funding is within twenty percent (20 percent) of the proposed amount, provided that, if requested by the proposer, a revised scope of work based on the recommended funding is submitted by the proposer for acceptance by the technical officer. However, when funding decreases in equipment and/or subcontracts are involved, the cognizant program office is required to identify the cost element(s) affected by the change in funding level.

(2) The grant officer will review the budget, and any changes made by the

technical officer, to identify any item which may be unallowable under the cost principles, or which appears unreasonable or unnecessary. The grant officer will complete Column C of the Budget Summary after discussing significant changes with the recipient and/or technical office. Requests for details from the recipient should be limited.

(3) The grant officer will address requests for direct charge of equipment in the negotiation summary, and state whether the purchase is approved as a direct cost.

(g) 42 U.S.C. 2459d prohibits NASA from funding any grant for longer than one year if the effect is to provide a guaranteed customer base for new commercial space hardware or services. The only exception would be if an Appropriations Act specifies the new commercial space hardware or services to be used.

(h) NASA reserves the right to either fully fund or incrementally fund grants based on fiscal law and program considerations. Grants with anticipated annual funding exceeding \$50,000 may be funded for less than the amount stated in the proposal.

(1) The grant officer will determine the number of incremental funding actions that will be allowed.

(2) The special condition at § 1260.53, Incremental Funding, will be included in the grant.

(i) Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the Government Printing and Binding Regulations, No. 26, February 1990, S. Pub. 101-9, U.S. Government Printing Office, Washington, DC 20402, published by the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO). The grant officer will be advised in writing of the results of the ICPMO review.

(j) The provision at § 1260.30, Rights in Data, is to be inserted as a standard provision into grants and cooperative agreements that don't require cost sharing. Additional language is required for cost sharing and/or matching efforts, and in cooperative agreements, as set forth in the provision.

(k) By acceptance of a grant (containing the provision at § 1260.34) the recipient agrees that it is in compliance with the Clean Air and Federal Water Pollution Control Acts. The Administrator may approve exemptions from this prohibition under certain circumstances under Executive Order 11738. Requests for exemptions or renewals thereof shall be made to the

Office of Procurement, NASA Headquarters, Program Operations Division (Code HS), Washington, DC 20546.

(l) Requests for acquisition of property may be made by a recipient either as part of the original budget proposal or subsequent to award. Comprehensive guidance on evaluating requests for acquisition of property, vesting of title, and administration issues, is set forth at § 1260.74.

§ 1260.12 Choice of award instrument.

(a) This section and § 1260.111 provide guidance on the appropriate choice of award instruments consistent with 31 U.S.C. 6301 to 6308. Throughout § 1260.12, the term "grant" does not include "cooperative agreements."

(b)(1) A procurement contract is a mutually binding legal relationship obligating the seller to furnish supplies or services (including construction), and the buyer pays for them.

(2) The principal purpose of a procurement contract is to acquire, for NASA's direct use or benefit, a well-defined, specific effort clearly required for the accomplishment of a scheduled NASA mission or project.

(3) If it is determined that a procurement contract is the appropriate type of funding instrument to meet NASA's purposes, the procurement shall be conducted under the FAR and the NFS (48 CFR Chapter 18).

(4) If an action is to be awarded for a dollar amount below the simplified acquisition threshold, the action may be completed by a contracting officer as a purchase order. The purchase order must be properly modified to include necessary language pertaining to data rights, key personnel requirements, and any other necessary requirements as determined by the contracting officer.

(c) A grant shall be used as the legal instrument to reflect a relationship between NASA and a recipient whenever the principal purpose is the transfer of anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. Grants are distinguished from cooperative agreements in that substantial involvement is not expected between NASA and the recipient when carrying out the activity. Grants are distinguished from contracts in that grants provide financial assistance to the recipient to conduct a fairly autonomous program; contracts entail acquisition. Various types of NASA grants contain different provisions and conditions as described in §§ 1260.20 and 1260.50. The major types of grants

and cooperative agreements are defined as follows. Grants and cooperative agreements to carry out other authorized purposes should be used to the extent appropriate, and must be in compliance with OMB Circular A-110.

(1) *Research grant.* A research grant shall be used to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study, or attempting to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art. The recipient will bear prime responsibility for the conduct of research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the resources provided;

(2) *Education grant.* Students and faculty receiving direct support under a NASA education grant must be U.S. citizens. An education grant is an agreement that provides funds to an educational institution or other nonprofit organizations within one or more of the following areas:

(i) Capturing student interest and/or improving student performance in science, mathematics, technology, or related fields;

(ii) Enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics, or technology;

(iii) Supporting national educational reform movements;

(iv) Conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and

(v) Developing instructional materials (e.g., teacher guides, printed publications, computer software, and videotapes) or networked information services for education;

(3) *Training grant.* A training grant is an agreement that provides funds primarily for scholarships, fellowships, or stipends to students, teachers, and/or faculty.

(i) NASA training grants are awarded to colleges, universities, or other nonprofit organizations; not to individual students, teachers, or faculty members. It is the responsibility of the institution receiving the grant to approve the faculty, teachers, and/or students who will participate in the specific program, in cooperation with NASA. If a student, teacher, or faculty member ceases to participate in the program for any reason, the institution, with prior NASA approval, may appoint another student,

teacher, or faculty member to complete the remaining portion of the grant period. Replacement students, teachers, and/or faculty electing to apply for the following program year are not automatically entitled to an award and are subject to the evaluation/selection procedures administered to new applicants. Any participant receiving support under a NASA training grant may not concurrently hold another Federal fellowship or traineeship.

(ii) No applicant shall be denied consideration or appointment on the grounds of race, creed, color, national origin, age, sex, or disability.

(iii) Students and faculty receiving direct support under a NASA training grant must be U.S. citizens, except for those supported by the NASA Earth System Science Fellowship Program, the Graduate Student Fellowship in Global Change Research Program, and the GLOBE Program.

(iv) Duration of the award is program specific. Refer to program policies and procedures for details. Renewal is contingent upon a successful performance evaluation as prescribed by the program, concurrence by the NASA technical officer, and the availability of funds.

(v) No substantial involvement is expected between NASA and the recipient. A student or faculty member receiving support under a NASA training grant does not incur any formal obligation to the Government.

(vi) The use of training grant funds to acquire equipment, or to acquire or construct facilities will not be permitted. Government furnished equipment will not be provided.

(vii) An Administrative Report must be submitted under the guidelines described by the specific program policies and procedures.

(4) *Facilities grant.* A facilities grant is used to provide for the acquisition, construction, use, maintenance, and disposition of facilities. Facilities, as used in this section, means property used for production, maintenance, research, development, or testing. Prior approval by the Associate Administrator of Procurement is required before proceeding with a facilities grant. To obtain prior approval, a package will be forwarded to the Director, Program Operations Division (HS), during the planning phase of the grant, that includes pertinent background information, details on Congressional Authorization, dollar value, and name of the recipient. Other information, such as a copy of the proposed facility grant award document, is not required. It is unlikely an award will be approved unless specifically authorized by

Congress. A review by legal counsel to assure legal sufficiency is also required.

(d) *Cooperative agreement.* A cooperative agreement shall be used as the legal instrument reflecting a relationship between NASA and a recipient whenever the principal purpose is the transfer of anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, and substantial involvement is anticipated between NASA and the recipient during performance of the contemplated activity (31 U.S.C. 6305). Characteristics inherent in a cooperative agreement include those that apply to a grant, plus the following:

(1) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This could involve an active NASA role in collaborative relations, access to a NASA site or equipment, or sharing NASA facilities and personnel. For example, a university investigator could work for a substantial amount of time at a NASA Center, a NASA investigator could work at a university, or when the collaboration is such that a jointly authored report or education curriculum product is appropriate;

(2) The project, conducted as proposed, would not be possible without extensive NASA-recipient technical collaboration;

(3) The nature of the collaboration shall be clearly defined and specified in the special condition at § 1260.51.

(e)(1) Grants and cooperative agreements with foreign organizations. Grants and cooperative agreements with foreign organizations provide for research to be performed in whole, or in part, by a foreign organization, with funding being provided by NASA to the foreign organization as reimbursement for the work performed.

(2) It is NASA policy that, in general, research with foreign organizations will not be conducted through grants or cooperative agreements, but instead will be accomplished on a no-exchange-of-funds basis. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. NASA policy on performing research with foreign organizations on a no-exchange-of-funds basis is set forth at NFS 1835.016-70. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

(3) Grants and cooperative agreements to foreign organizations are made on an exceptional basis only. Awards require the prior approval of the Headquarters Office of External Relations (Code I) and

the Headquarters Office of the General Counsel (Code G). Requests to award foreign grants or cooperative agreements are to be coordinated through the Office of Procurement, Program Operations Division (Code HS). Requests for approval shall contain:

(i) The identity of the foreign entity, the country or countries involved, and the purpose of the grant or cooperative agreement.

(ii) The Space Act Agreement(s) or underlying international agreement involved, if any.

(iii) A description of the effort to be undertaken by the entity described in paragraph (e)(3)(i) of this section, including their dollar value.

(iv) The reason why the grant or cooperative agreement requires a placement with a foreign organization.

(v) The reason why the work can not be accomplished on a no exchange of funds basis.

(4) Grants and cooperative agreements to foreign organizations require a review by the Office of General Counsel.

(5) The requirements of this section do not apply to the purchase of supplies or services (excluding research) from non-U.S. sources by U.S. grant or cooperative agreement recipients, when necessary to support research efforts.

(f)(1) The decision whether to use a contract, grant or cooperative agreement as an award instrument must be based on the principal purpose of the relationship. When NASA, within its authority, enters into a transaction where the principal purpose is to accomplish a public purpose of support or stimulation authorized by Federal statute, a grant or a cooperative agreement is the appropriate instrument. Conversely, if the principal purpose of a transaction is to accomplish a NASA requirement, *i.e.*, to produce something for NASA's own use, a procurement contract is the appropriate instrument. Two essential questions must be asked to ensure that a grant or cooperative agreement is the appropriate instrument. The first question is: Will NASA be directly harmed in furthering a specific NASA mission requirement if the effort is not accomplished? The answer to this question must be "no." The second question is: Is the work being performed by the recipient primarily for its own purposes, which NASA is merely supporting with financial or other assistance? The answer to this question must be "yes." If these criteria are met, then the effort is not a NASA requirement, and can then be considered as to whether it supports or stimulates a public purpose.

(2) In applying the principal purpose test, it must be determined whether the Government is the direct beneficiary or user of the activity. If NASA provides the specifications for the project; or is having the project completed based on its own identified needs; or will directly use the report or result of the project for a scheduled NASA mission, then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of NASA, and thus, a contractual relationship exists.

However, there may be cases where NASA expects to derive some incidental use or benefit from funded activities. In fact, any extramural expenditure that furthers the Agency's goals or mission can be said to be of benefit or use to the Government. But not every expenditure produces for the Government a benefit or use that is direct; *i.e.*, immediate, uninterrupted, or specific. Where an expenditure will produce a benefit or use that is only indirect in nature, a grant or cooperative agreement may be used.

(3) The status of the entity involved is not a primary factor in determining the appropriate award instrument. For example, an entity that operates on a non-profit basis may receive funding through a contract, and is not limited to receiving grants or cooperative agreements. Similarly, a profit-making firm may receive funding through grants, cooperative agreements, or contracts.

(4) NASA offices may be mandated through their missions to support specific scientific, educational, or training programs. The office may be accountable to NASA management, the Administration, or Congress for oversight and proper implementation of the program, may require direct oversight, may be directly accountable for the results of the program and that the work be successfully completed. Whenever the office requesting the grant or cooperative agreement would be directly harmed in performing its mission if an award was not made, a grant or cooperative agreement is not appropriate. Specific examples of situations requiring special scrutiny include—

(i) Education grants that for the administration of a program for which the education office is directly responsible;

(ii) Research or education grants to establish and support university laboratories on a non-competitive basis, with the resulting work of direct benefit to NASA; or

(iii) Training grants that hire university students, on a non-competitive basis, to perform work at a

NASA Center in direct support of NASA personnel, and perform work which is required in support of a NASA mission.

(5) A grant may be used to provide funding to an association to hold a conference (among its members and NASA officials) where the benefits flow primarily to the association and its members, not to NASA. The principal purpose will be to advance research or other purposes of the association. Thus, NASA may not direct an association in arranging the conference or in providing other services for NASA's benefit. The conference should be run by the association, not by NASA. Conferences sponsored or initiated by NASA primarily to meet a specific NASA need or obtain information for the direct benefit of NASA must be supported by means of a contract.

§ 1260.13 Award procedures.

(a) Award instruments are classified as follows:

(1) Annual grants are grants awarded for a short term (*e.g.*, on an annual basis).

(2) Multiple year grants support research projects that may span several years. NASA policy is to make maximum use of multiple year grants. A Multiple Year Grant is generally selected for a period of three years in keeping with NASA's policy calling for research to be peer reviewed at least every three years. Grants with periods of performance in excess of three years may be appropriate when the NASA technical office determines at the inception of the grant that a period of performance in excess of three years is necessary to complete a discrete research effort.

(i) If the decision to provide multiple year funding to a research proposal is made, the special condition at § 1260.52, Multiple Year Grant or Cooperative Agreement, will be included in the award.

(ii) Periods approved under the Multiple Year Grant or Cooperative Agreement special condition at § 1260.52, and funded at the levels specified in the special condition, are not considered to be new awards. Therefore, new proposals, new proposal-related certifications (such as Disclosure of Lobbying Activities, and Debarment and Suspension), new technical evaluations, and new budget proposals are not required, as long as this information for the multiple year period was reviewed and approved as part of the original proposal.

(iii) If NASA program constraints or developments within the research project dictate a reduction in the funding level specified under a Multiple

Year Grant period, research may continue at the reduced level under the terms of the provisions; however, the recipient may rebudget under the grant provisions to keep the project within the funding actually provided.

(3) An augmentation to a grant may be issued as a supplement at any time when work is introduced which is outside the scope of the approved proposal or when there is a need for substantial unanticipated funding. The grant officer must first determine whether the augmentation requires a separate approval as a non-competitive addition to the work to be performed under the grant. Augmentations require the submission of revised budget proposals and technical evaluations covering the additional work. Since augmentations will be performed within the existing period of performance, certifications will not normally be required.

(4) A grant extension may be placed to extend the grant beyond the expiration date, in accordance with the provision at § 1260.23, Extensions, if additional time beyond the established period of performance is required to assure adequate completion of the original scope of work within the available funding.

(5) Grant renewals provide for continuation of research beyond the original scope, period of performance and funding levels; therefore, new proposals, certifications and technical evaluations are required prior to the execution of a grant renewal. Grant renewals will be awarded as new grants. Continued performance within a period specified under the Multiple Year Grant provision does not constitute a renewal. For research originally awarded through a competitive NRA, CAN, or other competitive announcement that has completed its period of performance, peer review of a proposal to continue the research should be accomplished prior to selecting the research grant for renewal. If the effort was originally awarded through an unsolicited proposal, a new justification to accept the unsolicited proposal would be required (however, also see § 1260.12(f)(1)). Multiple year grant special conditions may be incorporated into renewals.

(b) While NASA normally provides full funding support for research grants, alternate methods of grant funding are as follows:

(1) Since NASA grant recipients usually gain no measurable commercial or economic benefit from grants, other than conducting research, cost sharing for research grants is not generally required. NASA may, however, accept

cost sharing when voluntarily offered. Additionally, in instances when the grant officer determines that the recipient will benefit from the research results through sales to non-Federal entities, cost sharing based upon this mutuality of interest will apply. See § 1260.123. When cost sharing is used, the grant officer shall insert a Special Condition substantially as shown in § 1260.54, Cost Sharing. (See 14 CFR part 1274 for grants and cooperative agreements with commercial organizations involving cost sharing.)

(2) NASA may provide partial support for a research project or conference where additional funding is being provided by other Federal agencies. If the grant also involves cost sharing by the recipient, the grant officer will ensure that the recipient's share does not include any Federal funds.

§ 1260.14 Limitations.

(a) NASA does not award grants merely to provide donative assistance no matter how worthy the purpose, but to the extent that appropriations are available to carry out authorized Agency programs. Research in any academic discipline related to NASA interests normally will qualify. However, advice of legal counsel should be sought in unusual situations, or when unusual project activities or organizational attributes are evident.

(b) It is NASA's policy that non-monetary (zero dollar) grants or cooperative agreements shall not be used, except for no-cost extensions.

(c) Loans of Government personal property not associated with a contract, grant, or cooperative agreement under 31 U.S.C. 6301 to 6308, and made under the Space Act of 1958, should be consummated as loan agreements. Also, excess Government research property may be donated to educational institutions and nonprofit organizations pursuant to 15 U.S.C. 3710(l). See § 1260.133(a)(2).

(d) Neither grants nor cooperative agreements shall be used as legal instruments for consulting service arrangements.

§ 1260.15 Format and numbering.

(a) A grant shall be brief, containing only those provisions and special conditions necessary to protect the interests of the Government.

(b) Cover page formats shown in Exhibit B to subpart A of this Part 1260 shall be used for all NASA grant and cooperative agreement award documents. Provisions for grants with U.S. organizations shall be incorporated by reference, and preprinted checklists may be used (Exhibit C to subpart A of

this part 1260). Both special conditions and provisions for grants with foreign organizations will be printed in full text. An acceptance block may be added when the grant officer finds it necessary to require bilateral execution of the grant. Program budgets are not generally attached to the award document. When it is necessary to attach the budget due to revisions to the original proposed budget or other reasons, this information should be suitably marked as confidential, and is not be disclosed outside of the Government without the consent of the grantee.

(c) The Identification Numbering System to be used prior to Integrated Financial Management Project (IFMP) implementation will be applied as follows:

(1) For research, education, and facilities grants, numbering shall conform to (NFS) 48 CFR 1804.7102(a) by including the Center Identification Number, except that a NAG prefix will be used in lieu of the NAS prefix (*e.g.*, NAG5 would be the Goddard prefix designation). They will be sequentially numbered.

(2) Cooperative agreements will use the prefix NCC plus the Center Identification Number. They will be sequentially numbered.

(3) Training grants will use the prefix NGT plus the Center Identification Number. They will be sequentially numbered.

(4) The Catalog of Federal Domestic Assistance (CFDA) Numbers does not apply to NASA grants.

(d) The Identification Numbering System will be revised after IFMP implementation. There will be a phase-in term for Center implementation of the IFMP. For centers using IFMP Performance Purchasing; the following numbering system shall be used for new awards (awards made prior to conversion to IFMP will retain previously assigned numbers):

(1) Document Type for grants. For research, education, facilities, and training grants, the document type prefix GR shall be used.

(2) Document Type for cooperative agreements. Cooperative agreements will use the prefix CO.

(3) Agency Identifier. The Agency identifier NAS shall follow the document number.

(4) Center Smart Codes. The Center identifier shall follow the document type:

Installation	Smart code
Ames Research Center	A
Dryden Flight Research Center	D

Installation	Smart code
Glenn Research Center	C
Goddard Space Flight Center	G
Headquarters	H
Johnson Space Center	J
Kennedy Space Center	K
Langley Research Center	L
Marshall Space Flight Center	M
NASA Management Office—JPL	P
Stennis Space Center	S

(5) Fiscal Year. The fiscal year shall be represented as two digits.

(6) Procurement Code. "G" will be used as the procurement code to identify grants. Cooperative Agreements will be identified using "A" as the procurement code.

(7) Serial Numbers. Installations shall number grants and cooperative agreements serially by fiscal year. The serial number shall be six digits commencing with "000001" and continuing in succession.

(8) As an example of the above set forth methodology, the first two grants awarded by Marshall Space Flight Center in fiscal year 1999 would be GRNASM99G000001 and GRNASM99G000002.

(9) The Catalog of Federal Domestic Assistance (CFDA) Numbers does not apply to NASA grants.

§ 1260.16 Distribution.

(a) Copies of grants and supplements will be provided to—

- (1) Payment offices (original copy);
- (2) Technical officers;
- (3) Administrative grant officers when delegated;

(4) The NASA Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076; and

(5) Other appropriate offices as determined by the grant officer.

(b) In addition to receipt of grants and supplements, the administrative grant officer will receive a copy of the approved budget.

(c) The file will record the addresses for distribution.

Provisions

§ 1260.20 Provisions.

(a) Research grants, education grants, and cooperative agreements with U.S. educational institutions and nonprofit organizations shall incorporate by reference the provisions set forth in §§ 1260.21 through 1260.38. Training grants shall incorporate by reference the provisions set forth in §§ 1260.21 through 1260.38, except that the grant officer will substitute § 1260.22, Technical Publications and Reports,

with reporting requirements as specified by the program office.

(b) Facilities grants provisions will be selected on a case-by-case basis (see § 1260.50).

(c) Research grants awarded to foreign organizations, when approved by Headquarters, will include the following provisions at a minimum: §§ 1260.21, 1260.22, 1260.23, 1260.24, 1260.25, 1260.26, 1260.27, 1260.29, 1260.33, 1260.35, 1260.36 and 1260.37.

Additional special conditions will be selected on a case by case basis (see § 1260.50). All provisions will be provided in full text. Referenced handbooks, statutes, or other regulations, which the recipient may not have access to, must be made available when requested by the foreign organization.

(d) The provisions set forth at §§ 1260.21 through 1260.38 do not apply to awards made under the Federal Demonstration Partnership (FDP). FDP awards are subject to the FDP Phase III General Terms and Conditions and the NASA Agency Specific Requirements Modifications to the General Terms and Conditions (Exhibit D to subpart A of this part 1260). Since these documents are provided directly to the FDP institutions, they are not to be attached to FDP grants. However, the grant officer will include a statement similar to the following on FDP grants: "The Federal Demonstration Partnership General Terms and Conditions and NASA Agency-specific Requirements apply to this award."

(e) Grants or cooperative agreements awarded by NASA to the Commercial Space Centers under the Space Development and Commercial Research (SDCR) Program require special conditions in addition to those set forth at §§ 1260.21 through 1260.38. SDCR Special Conditions are required to be included in full text for all SDCR Grants and Cooperative Agreements (Exhibit E to subpart A of this part 1260). Changes or additions to these Special Conditions must be approved by the Office of Space Utilization and Product Development (Code UM) prior to the award of the grant. Requests for changes or additions are to be coordinated through the Office of Procurement, Program Operations Division (Code HS).

(f) Grants and cooperative agreements awarded by NASA to commercial organizations where cost sharing is not required shall incorporate the provisions set forth at §§ 1260.21 through 1260.38, modified as set forth under 1260.4(b).

(g) Grants and cooperative agreements not specifically classified elsewhere in this section, but that are awarded for

other authorized purposes, shall include provisions selected on a case-by-case basis.

(h) Whenever the word "grant" appears in §§ 1260.21 through 1260.38, it shall be deemed to include, as appropriate, the term "cooperative agreement."

§ 1260.21 Compliance With OMB Circular A-110.

Compliance With OMB Circular A-110 October 2000

This grant or cooperative agreement is subject to the requirements set forth in OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. Recipients are required to comply with the requirements of A-110, as adopted by NASA as subpart B of Part 1260 of Title 14 of the Code of Federal Regulations. Specific provisions set forth in this award document are provided to supplement and clarify, not replace, the Circular, except in circumstances where a waiver from Circular requirements has been obtained by NASA.

[End of provision]

§ 1260.22 Technical publications and reports.

(This provision describes standard reporting requirements that should be applied in most circumstances. The requirements set forth under this provision may be modified by the grant officer based on specific report needs for the grant or cooperative agreement, provided that reporting requirements do not conflict with § 1260.151. Any special reporting requirements will be set forth as a special condition in the award document.)

Technical Publications and Reports

October 2000

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation.

(1) All information disseminated as a result of the grant shall contain a statement which acknowledges NASA's support and identifies the grant by number (e.g., "The material is based upon work supported by NASA under award No(s) GRNASM99G000001, etc.").

(2) Except for articles or papers published in scientific, technical, or professional journals, the exposition of results from NASA supported research should also include the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration."

(b) Reports shall be in the English language, informal in nature, and ordinarily not exceed three pages (not counting bibliographies, abstracts, and lists of other media). The recipient shall submit the following reports:

(1) A Progress Report for all but the final year of the grant. Each report is due 60 days

before the anniversary date of the grant and shall briefly describe what was accomplished during the reporting period as outlined in § 1260.151(d). A special condition specifying more frequent reporting may be required.

(2) A Summary of Research (or Educational Activity Report in the case of Education Grants) is due within 90 days after the expiration date of the grant, regardless of whether or not support is continued under another grant. This report shall be a comprehensive summary of significant accomplishments during the duration of the grant.

(c) Progress Reports, Summaries of Research, and Educational Activity Reports shall include the following on the first page:

- (1) Title of the grant.
- (2) Type of report.
- (3) Name of the principal investigator.
- (4) Period covered by the report.
- (5) Name and address of the recipient's institution.

(6) Grant number.

(d) Progress Reports, Summaries of Research, and Educational Activity Reports shall be distributed as follows:

(1) The original report, in both hard copy and electronic format, to the Technical Officer.

(2) One copy to the NASA Grant Officer, with a notice to the Administrative Grant Officer, (when administration of the grant has been delegated to ONR), that a report was sent.

(e) For Summaries of Research and published reports, one micro-reproducible copy shall also be sent to the NASA Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076.

[End of provision]

§ 1260.23 Extensions.

Extensions

October 2000

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research and educational activities, therefore, grants may be extended for additional periods of time when necessary to complete work that was part of the original award. NASA generally only approves such extensions within funds already made available. Any extension that would require additional funding must be supported by a proposal submitted at least three months in advance of the expiration date of the grant.

(b) In accordance with § 1260.125(e)(2), Recipients may extend the expiration date of a grant if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, the recipient may make a one-time no-cost extension, not to exceed 12 months, prior to the established expiration date. Written notification of such an extension, with the supporting reasons, must be received by the NASA Grant Officer at least ten days prior to the expiration of the award. A copy of the extension must also be forwarded to cognizant Office of Naval Research office. NASA reserves the right to

disapprove the extension if the requirements set forth at § 1260.125(e)(2) are not met.

(c) Requests for approval for all other no-cost extensions must be submitted in writing to the NASA Grant Officer. Copies are to be forwarded to the cognizant Office of Naval Research office.

[End of provision]

§ 1260.24 Termination and enforcement.

Termination and Enforcement

October 2000

Termination and enforcement conditions of this award are specified in §§ 1260.160 through 1260.162.

[End of provision]

§ 1260.25 Change in principal investigator or scope.

Change in Principal Investigator or Scope

October 2000

The following guidance is provided as an amplification to prior approval requirements set forth at § 1260.125(c):

(a) The Recipient shall obtain the approval of the NASA Grant Officer for a change of the Principal Investigator, or for a significant absence of the Principal Investigator from the project, defined as a three month absence from the program or a 25 percent reduction in time devoted to the project. Significantly reduced availability of the services of the Principal Investigator(s) named in the grant instrument could be grounds for termination, unless alternative arrangements are made and approved in writing by the Grant Officer.

(b) Prior written approval is required from NASA if there is to be a significant change in the objective or scope.

[End of provision]

§ 1260.26 Financial management.

Financial Management

October 2000

(a) Advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Center which issued the grant in accordance with procedures provided to the recipient. The Recipient shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and to the Administrative Grant Officer (if NASA has delegated administration) within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported. There will be a phase-in term for NASA adoption of an automated 272 system not requiring the forecast estimates. It is anticipated that this forecast requirement will be deleted no later than October 1, 2001. The final SF 272 is due within 90 days after the expiration date of the grant. The final SF 272 shall be submitted to the Financial Management Office, with copies sent to the NASA Grant Officer, and to the Administrative Grant Officer when the Office of Naval Research (ONR) has been delegated grant closeout responsibilities.

(b) Unless otherwise directed by the Grant Officer, any unexpended balance of funds

which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. This includes allowing the carry over of funds to the second and subsequent years of a multiple year grant. This provision also applies to subcontractors performing substantive work under the grant. For grant renewals, the estimated amount of unexpended funds shall be identified in the grant budget section of the recipient's renewal proposal. NASA reserves the right to remove unexpended balances from grants when insufficient efforts have been made by the grantee to liquidate funding balances in a timely fashion.

[End of provision]

§ 1260.27 Equipment and other property.

Equipment and Other Property

October 2000

(a) NASA permits acquisition of special purpose and general purpose equipment specifically required for use exclusively for research activities.

(1) Acquisition of special purpose or general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the Recipient) and not included in the approved proposal budget, requires the prior approval of the NASA Grant Officer. Grant awards under the Federal Demonstration Partnership are exempt from this requirement. Requests to the NASA Grant Officer for the acquisition of equipment shall be supported by written documentation setting forth the description, purpose, and acquisition value of the equipment, and including a written certification that the equipment will be used exclusively for research, activities. (A change in the model number of a prior approved piece of equipment does not require resubmission for that item.)

(2) Special purpose and general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the Recipient) acquired by the recipient under a grant or cooperative agreement for the purpose of research shall be titled to the Recipient as "exempt" without further obligation to NASA, including reporting of the equipment, in accordance with § 1260.133(b). Special purpose or general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the Recipient) acquired by the Recipient under a grant or cooperative agreement for non-research work shall be titled to the Recipient in accordance with § 1260.134.

(3) Special purpose or general purpose equipment acquired by the Recipient with grant funds, valued under \$5,000 (unless a lower threshold is established by the Recipient) are classified as "supplies," do not require the prior approval of the NASA Grant Officer, shall vest in the Recipient and will be titled to the Recipient in accordance with § 1260.135.

(4) Grant funds may be expended for the acquisition of land or interests therein or for the acquisition and construction of facilities

only under a facilities grant, as defined in § 1260.12(c)(4).

(b) The Recipient shall submit an annual Inventory Report, to be received no later than October 31 of each year, which lists all reportable (non-exempt equipment and/or Federally owned property) in its custody as of September 30. Negative responses for annual Inventory Reports (when there is no reportable equipment) are not required. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the Recipient no later than 60 days after the expiration date of the grant. Negative responses for Final Inventory Reports are required.

(1) All reports will include the information listed in paragraph (f)(1) of § 1260.134, Equipment. No specific report form or format is required, provided that all necessary information set forth at § 1260.134(f)(1) is provided.

(2) The original of each report shall be submitted to the Deputy Chief Financial Officer (Finance). Copies shall be furnished to the Center Industrial Property Officer and to ONR.

[End of provision]

§ 1260.28 Patent rights.

Patent Rights

October 2000

As stated at § 1260.136, this award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 "Patent Rights (Small Business Firms and Nonprofit Organizations)" and the following:

(a) Where the term "contract" or "Contractor" is used in the "Patent Rights" clause, the term shall be replaced by the term "grant" or "Recipient," respectively.

(b) In each instance where the term "Federal Agency," "agency," or "funding Federal agency" is used in the "Patent Rights" clause, the term shall be replaced by the term "NASA."

(c) The following item is added to the end of paragraph (f) of the "Patent Rights" clause: "(5) The Recipient shall include a list of any Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal. A complete list (or a negative statement) for the entire award period shall be included in the summary of research."

(d) The term "subcontract" in paragraph (g) of the "Patent Rights" clause shall include purchase orders.

(e) The NASA implementing regulation for paragraph (g)(2) of the "Patent Rights" clause is at 48 CFR 1827.304-4(a)(i)(B).

(f) The following requirement constitutes paragraph (l) of the "Patent Rights" clause:

"(l) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the NASA Grant Officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the recipient

has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the Recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the NASA Grant Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Recipient has applied for patents."

(g) *NASA Inventions*. NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this agreement and, upon timely request, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

(h) In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by Contractor employees, the Recipient will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR Part 1245, and Executive Order 12591. In the event the Recipient decides not to pursue rights 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, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government. [End of provision]

§ 1260.29 Reserved.

§ 1260.30 Rights in data.

(The grant officer may revise the language under this provision to modify each party's rights based on the particular circumstances of the program and/or the recipient's need to protect specific proprietary information. Any modification to the standard language set forth under the provision requires the concurrence of the Center's Patent Counsel and that the provision be printed in full text.)

Rights in Data

October 2000

(a) Fully Funded Efforts.

(1) "Data" means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. 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.

(2) The Recipient grants to the Federal Government, a royalty-free, nonexclusive and irrevocable license to use, reproduce, distribute (including distribution by

transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner for Federal purposes and to have or permit others to do so for Federal purposes only.

(3) In order that the Federal Government may exercise its license rights in data, the Federal Government, upon request to the Recipient, shall have the right to review and/or obtain delivery of data resulting from the performance of work under this grant, and authorize others to receive data to use for Federal purposes.

(b) *Cost Sharing and/or Matching Efforts*. When the Recipient cost shares with the Government on the effort, the following paragraph applies:

"(1) In the event data first produced by Recipient in carrying out Recipient's responsibilities under an agreement is furnished to NASA, and Recipient considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its Contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in § 1260.30(a)(2)."

(c) *For Cooperative Agreements the following paragraph applies:*

"(1) As to data first produced by NASA in carrying out NASA's responsibilities under a cooperative agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it has been obtained from the Recipient, such data will be marked with an appropriate legend and maintained in confidence for 5 years (unless a shorter period has been agreed to between the Government and Recipient) 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." [End of provision]

§ 1260.31 National security.

National Security

October 2000

Normally, NASA grants do not involve classified information. However, if it is known in advance that a grant involves classified information or if the work on the grant is likely to develop classified information, individuals performing on the grant who will have access to the information must obtain the appropriate security

clearance in advance of performing on the grant, in accordance with NASA Policy Guidance (NPG) 1620.1, Security Procedures and Guidelines. When access to classified information is not originally anticipated in the performance of a grant, but such information is subsequently sought or potentially developed by the grant Recipient, the NASA Grant Officer who issued the grant shall be notified immediately, and prior to work under the grant proceeding, to implement the appropriate clearance requirements. [End of provision]

§ 1260.32 Nondiscrimination.

Nondiscrimination

October 2000

(a) To the extent provided by law and any applicable agency regulations, this award and any program assisted thereby are subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Title IX of the Education amendments of 1972 (Pub. L. 92-318, 20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (Pub. L. 94-135), the implementing regulations issued pursuant thereto by NASA, and the assurance of compliance which the recipient has filed with NASA.

(b) The Recipient shall obtain from each organization that applies or serves as a subrecipient, Contractor or subcontractor under this award (for other than the provision of commercially available supplies, materials, equipment, or general support services) an assurance of compliance as required by NASA regulations.

(c) Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d-l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252). [End of provision]

§ 1260.33 Subcontracts.

Subcontracts

October 2000

(a) Recipients shall notify NASA when a subcontract award will be made that falls within the thresholds established at § 1260.144(e). When pre-award review of a subcontract is requested by the NASA Grant Officer in accordance with § 1260.144(e), the following specific documents will be made available to the NASA Grant Officer. (The Grant Officer can request additional documents):

- (1) A copy of the proposed subcontract.
 - (2) The basis for subcontractor selection.
 - (3) Justification for lack of competition when competitive bids or offers are not obtained.
 - (4) The subcontract budget and basis for subcontract cost or price.
- (b) The Recipient (with the exception of foreign organizations) shall utilize small

business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.
[End of provision]

§ 1260.34 Clean air and water.

Clean Air and Water

October 2000

(Applicable only if the award exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)), and is listed by EPA, or if the award is not otherwise exempt). The Recipient agrees to the following:

(a) Comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

(b) Ensure that no portion of the work under this award will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date that this award was effective unless and until the EPA eliminates the name of such facility or facilities from such listings.

(c) Use its best efforts to comply with clean air standards and clean water standards at the facility in which the award is being performed.

(d) Insert the substance of the provisions of this clause into any nonexempt subaward or contract under the award.

(e) Report violations to NASA or to EPA.
[End of provision]

§ 1260.35 Investigative requirements.

Investigative Requirements

October 2000

(a) As requested by NASA, the Recipient of each grant, and any other individuals to perform on the grant, agree to provide sufficient personal/biographical information necessary to conduct an investigation of the individual's background. The purpose of the investigation is to allow access to a NASA Center, or to NASA information, for performance of this grant. The Recipient acknowledges that NASA reserves the right to perform security checks, and to deny or restrict access to a NASA Center, facility, computer system, or technical information as appropriate.

(b) All visit requests must be submitted in a timely manner in accordance with instructions provided by the Center(s) to be visited.
[End of provision]

§ 1260.36 Travel and transportation.

Travel and Transportation

October 2000

(a) The Fly American Act, 49 U.S.C. 1517, 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]

§ 1260.37 Safety.

Safety

October 2000

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this grant or 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 Grant Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property in performing this grant or cooperative agreement. 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 grant or 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]

§ 1260.38 Drug-free workplace.

Drug-Free Workplace

October 2000

(a) Definitions. As used in this provision—
Controlled substance means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 through 1308.15.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

Drug-free workplace means the site(s) for the performance of work done by the Recipient in connection with a specific grant or cooperative agreement at which employees of the Recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a Recipient directly engaged in the performance of work under a Government grant or cooperative agreement. "Directly engaged" is defined to include all direct cost employees and any other Recipient employee who has other than a minimal impact or involvement in performance of the grant or cooperative agreement.

Individual means a Proposer/Recipient that has no more than one employee including the Proposer/Recipient.

(b) The Recipient, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing), or as soon as possible for grants and cooperative agreements of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Recipient's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the grant or cooperative agreement with a copy of the statement required by paragraph (b)(1) of this provision;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this provision that, as a condition of continued employment on the grant or cooperative agreement, the employee will—

(i) Abide by the terms of the statement; and
(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Grant Officer in writing within 10 days after receiving notice under paragraph (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under paragraph (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this provision.

(c) The Recipient, if an individual, agrees by acceptance of the grant or cooperative agreement, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance during performance.

(d) In addition to other remedies available to the Government, the Recipient's failure to

comply with the requirements of paragraph (b) or (c) of this provision may render the Recipient subject to suspension of payments, termination of the grant or cooperative agreement, and suspension or debarment. [End of provision]

Special Conditions

§ 1260.50 Special conditions.

(a) In addition to the provisions set forth in 1260.21 through 1260.38, NASA grants and cooperative agreements are subject to special conditions, which either are not applicable to all awards or are temporary in nature. Examples are found in §§ 1260.51 through 1260.69, but NASA may impose other conditions as discussed in § 1260.114 or as the requirements dictate. Deviations are not required for changes made to special conditions.

(b) Special conditions will be printed in full text.

(c) In facilities grants, special conditions will be selected on a case-by-case basis. As appropriate, the requirements of the following sections will apply: § 1260.123(c), Cost Sharing or Matching; § 1260.125(h), Revision of Budget and Program Plans; and § 1260.132, Real Property.

(d) Research grants with foreign organizations will include special conditions at §§ 1260.59 through 1260.61, modified as necessary, when not covered under a Memorandum of Agreement (MOA). In addition, other special conditions (e.g., §§ 1260.62 through 1260.65) will be written with the aid of legal counsel, and added when necessary.

(e) Grants and cooperative agreements awarded by NASA to commercial organizations where cost sharing is not required shall incorporate the special conditions prescribed at § 1260.4.

§ 1260.51 Cooperative agreement special condition.

Cooperative Agreement Special Condition

October 2000

(a) This award is a cooperative agreement as it is anticipated there will be substantial NASA involvement during performance of the effort. NASA and the Recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort:

(Reference the approved proposal that contains a detailed description of the work and insert a concise statement of the exact nature of the cooperative interactions that deals with existing facts and not contingencies.)

(b) The terms "grant" and "Recipient" mean "cooperative agreement" and "Recipient of cooperative agreement," respectively, wherever the terms appear in provisions and special conditions included in this agreement.

(c) NASA's ability to participate and perform its collaborative effort under this cooperative agreement is subject to the availability of appropriated funds and nothing in this cooperative agreement commits the United States Congress to appropriate funds therefor.

§ 1260.52 Multiple year grant or cooperative agreement.

Multiple Year Grant or Cooperative Agreement

October 2000

This is a multiple year grant or cooperative agreement. Contingent on the availability of funds, scientific progress of the project, and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year \$_____, Anticipated funding date_____.

Third year \$_____, Anticipated funding date_____.

(Periods may be added or omitted, as applicable)

§ 1260.53 Incremental funding.

Incremental Funding

October 2000

(a) Only \$_____ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making additional allotments of funds during performance of this effort. It is anticipated that these funds will be obligated as appropriated funds become available without any action required by the Recipient. The Recipient will be given written notification by the NASA Grant Officer.

(b) The recipient agrees to perform work up to the point at which the total amount paid or payable by the Government approximates but does not exceed the total amount actually allotted to this grant or cooperative agreement. NASA is not obligated to reimburse the Recipient for the expenditure of amounts in excess of the total funds allotted by NASA to this grant or cooperative agreement. The Recipient is not authorized to continue performance beyond the amount allotted to this award.

§ 1260.54 Cost sharing.

Cost Sharing

October 2000

(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.

(b) The funding and non-cash contributions by both parties is represented by the following dollar amounts:

Government Share _____

Recipient Share _____

Total Amount _____

(c) Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by

§ 1260.123, Cost Sharing or Matching. The applicable Federal cost principles are cited in § 1260.127.

(d) The Recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement.

§ 1260.55 Reports substitution.

Reports Substitution

October 2000

Technical Reports may be substituted for the required Performance Reports. The title page of such reports shall clearly indicate that the substitution has been made and will show the period covered by the originally required Performance Report.

§ 1260.56 Withholding.

Withholding

October 2000

If a Recipient fails to comply with the terms and conditions of this grant or cooperative agreement, including reporting requirements, NASA may withhold advance payments under this award, and may also withhold future awards to the Recipient, pending correction of the deficiency by the Recipient. If advance payments are withheld, the Grant Officer will notify the NASA Financial Management Office when payments may resume.

§ 1260.57 New technology.

New Technology

October 2000

(a) Definitions.

Administrator, as used in this special condition, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Grant, as used in this special condition, means any actual or proposed grant, cooperative agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this special condition, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of grant performance.

Nonprofit organization, as used in this special condition, 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.

Practical application, as used in this special condition, 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.

Reportable item, as used in this special condition, means any invention, discovery, improvement, or innovation of the grantee, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA grant or in the performance of any work that is reimbursable under any provision in any NASA grant providing for reimbursement of costs incurred before the effective date of the grant. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectable under Title 17 of the United States Code.

Small business firm, as used in this special condition, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations (see 13 CFR section 121.401 *et seq.*) of the Administrator of the Small Business Administration.

Subject invention, as used in this special condition, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(b) Allocation of principal rights.

(1) Presumption of title.

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and that presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Grant 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 special condition. 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 special condition 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 special condition.

(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 grant or within 30 days after execution of the grant, for advance waiver of rights to any or all of the inventions that may be made under a grant. 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 the invention in accordance with paragraph (e)(2) of this special condition, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

(1) With respect to each 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, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Recipient.

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a 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 special condition. 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 grant 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 37 CFR part 404, Licensing of Government Owned 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 to the Administrator 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 New Technology special condition within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this grant. 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 Grant 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 Grant Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this New Technology special condition 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 grant 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 Grant Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Grant Officer) from the date of the grant, 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 special condition have been followed.

(ii) A final report, within 3 months after completion of the grant 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 Grant 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 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 special condition.

(f) Examination of records relating to inventions.

(1) The Grant Officer or any authorized representative shall, until 3 years after final payment under this grant, 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 grant 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 special condition; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Grant Officer learns of an unreported Recipient grantee invention that the Grant Officer believes may be a subject invention, 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) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this grant, the Grant Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this grant, whichever is less, shall have been set aside if, in the Grant Officer's opinion, the Recipient fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this special condition;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this special condition;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this special condition; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this special condition.

(2) Such reserve or balance shall be withheld until the Grant Officer has determined that the Recipient has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by the grant.

(3) Final payment under the grant shall not be made before the Recipient delivers to the Grant Officer all disclosures of reportable items required by paragraph (e)(2) of this special condition, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this special condition.

(4) The Grant Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (g)(1) of this special condition. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the grant. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) Unless otherwise authorized or directed by the Grant Officer, the Recipient shall—

(i) Include the clause at NASA FAR Supplement (NFS) 1852.227-70, New Technology, (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 at FAR 52.227-11 (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 Grant 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 Grant Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Recipient agree that the mutual obligations of the parties created by this special condition constitute a contract between the subcontractor and NASA with respect to those matters covered by this grant.

(4) The Recipient shall promptly notify the Grant 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 Grant 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.

(5) The subcontractor will retain all rights provided for the Recipient in paragraph (h)(1)(i) or (ii) of this special condition, 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.

(i) Preference for United States industry. Unless provided otherwise, no Recipient that receives title to any subject invention and no assignee of any such Recipient shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Recipient or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

§ 1260.58 Designation of new technology representative and patent representative.

Designation of New Technology Representative and Patent Representative October 2000

(a) For purposes of administration of the special condition of this grant entitled "New Technology," the following named representatives are hereby designated by the Grant Officer to administer such special condition:

Title, Office Code, Address (including zip code)

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 special condition, 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. Inquires or requests regarding disposition of rights, election of rights, or related matters should

be directed to the Patent Representative. This special condition shall be included in any subcontract hereunder requiring a "New Technology" provision or "Patent Rights—Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305–370 of the NASA FAR Supplement.

§ 1260.59 Choice of law.

Choice of Law

October 2000

The rights and obligations of the parties to the grant (or cooperative agreement) shall be ascertainable by recourse to the laws of the United States of America. However, it is understood that the laws of the Recipient's country will generally apply to recipient activities within that country.

§ 1260.59A Invention reporting and rights.

Invention Reporting and Rights

October 2000

(a) As used in this provision:

(1) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(b) The Recipient shall report promptly to the grant officer each invention made in the performance of work under this grant. The report of such invention shall—

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) Reporting shall be made on NASA Form 1679 Disclosure of Invention and New Technology (Including Software).

(d) The Recipient hereby grants to the Government of the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, the full rights, title, and interest in and to each such invention throughout the world.

§ 1260.60 Public information.

Public Information

October 2000

Information regarding this grant (including a copy of this award document) may be released by the Recipient without restriction. However, technical information relating to work performed under this grant where there was a NASA contribution should be released by the Recipient only after consultation with the NASA Technical Officer.

§ 1260.61 Allocation of risk/liability.

Allocation of Risk/Liability

October 2000

(a) With respect to activities undertaken under this agreement, the Recipient agrees not to make any claim against NASA or the U.S. Government with respect to the injury or death of its employees or its contractors and subcontractor employees, or to the loss of its property or that of its Contractors and subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) In addition, the Recipient agrees to indemnify and hold the U.S. Government and its Contractors and subcontractors harmless from any third party claim, judgment, or cost arising from the injury to or death of any person, or for damage to or loss of any property, arising as a result of its possession or use of any U.S. Government property.

§ 1260.62 Payment—to foreign organizations.

Payment—To Foreign Organizations

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

§ 1260.63 Customs clearance and visas.

Customs Clearance and Visas

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

§ 1260.64 Taxes.

Taxes

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

§ 1260.65 Exchange of technical data and goods.

Exchange of Technical Data and Goods

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

§ 1260.66 Listing of reportable equipment and other property.

Listing of Reportable Equipment and Other Property

October 2000

(a) Title to federally-owned property provided to the Recipient remains vested in the Federal Government, and shall be managed in accordance with § 1260.133. The following items of federally-owned property are being provided to the recipient for use in performance of the work under this grant or cooperative agreement:

{List property or state "not applicable."}

(b) The following specific items of equipment acquired by the Recipient have been identified by NASA for transfer of title to the Government when no longer required for performance under this grant or cooperative agreement. This equipment will

be managed in accordance with 1260.134, and shall be transferred to NASA or NASA's designee in accordance with the procedures set forth at 1260.134(g):

{List property or state "not applicable."}

§ 1260.67 Equipment and other property under grants with commercial firms.

Equipment and Other Property Under Grants With Commercial Firms

(a) This grant permits acquisition of special purpose equipment required for the conduct of research. Acquisition of special purpose equipment costing in excess of \$5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) Recipients may not purchase, as a direct cost to the grant, items of general purpose equipment, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the Recipient requests an exception, the Recipient shall submit a written request for Grant Officer approval, prior to purchase by the Recipient, stating why the Recipient cannot charge the general purpose equipment to indirect costs.

(c) Under no circumstances shall grant 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.

(d) The Government shall have title to equipment and other personal property acquired with Government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603.

(e) 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.

(f) 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.

(g) 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 31. 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 31. A final report is required within 30 days after expiration of the agreement.

(h) The requirements set forth in this special condition supercedes grant provision 1260.27, Equipment and Other Property.

§ 1260.68 Invoices and payments under grants with commercial firms.

Invoices and Payments Under Grants With Commercial Firms

October 2000

(a) Invoices for payment of actual incurred costs shall be submitted by the Recipient no more frequently than on a _____ basis.

(b) Invoices shall be submitted by the Recipient to the following offices:

(1) The original invoice shall be sent directly to the payment office designated on the grant cover page.

(2) Copies of the invoice shall be sent to the NASA Technical Officer and NASA Grant Officer.

(c) All invoices shall reference the grant number.

(d) The final invoice shall be marked "Final" and shall be submitted within 90 days of the expiration of the grant.

(e) The requirements set forth in this special condition supercedes grant provision 1260.26, Financial Management.

§ 1260.69 Electronic funds transfer payment methods.

Electronic Funds Transfer Payment Methods

October 2000

(a) Payments under this grant 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 Grant Officer or other Government official, as directed.

(b) 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.

(c) 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.

(d) In the event the Recipient, during the performance of this grant, 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.

(e) 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.

(f) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(g) The requirements set forth in this special condition supercedes grant provision 1260.26, Financial Management.

Post-Award Requirements

§ 1260.70 Delegation of administration.

(a) Property administration and closeout of NASA grants and cooperative agreements will be delegated to the Office of Naval Research (ONR). Exceptions to this policy are:

(1) Training grants will not be delegated.

(2) Grants of short duration (9 months or less) or low dollar value (\$50k or less) will normally not be delegated.

(3) Grant officers may waive specific administration requirements in exceptional circumstances for individual grants. Exceptions to delegation must be justified and approved in writing by the Grant Officer, and made part of the file.

(4) Waiver of delegation of property administration or closeout to be instituted by a center as a standard practice constitutes a deviation to this handbook, and requires approval in accordance with § 1260.7.

(b) Delegations will be made by use of NF 1674 (Exhibit F to subpart A of this part 1260). The NF 1674, the award document, and the approved budget will be sent to ONR in a single package (electronically, when possible).

(c) Upon acceptance of a delegation, ONR agrees to the following:

(1) On a monthly basis, ONR will provide each center a Report of Accepted Delegations listing each grant or cooperative agreement accepted for administration, with pertinent

information including the ONR point of contacts name, phone number, and e-mail address.

(2) On a monthly basis, ONR will electronically send to each Center Commercial Technology Office a listing of New Technology Reports it has received.

(3) On a quarterly basis, ONR will provide the cognizant grant officers a "List of Delinquent Recipients" that failed to provide timely interim or final reports.

(4) Property administration should always be delegated, even if it is not anticipated that property will be provided by the government or acquired by the recipient. ONR shall follow DoD property administration policies and procedures, plus the following NASA requirements:

(i) The recipient shall maintain property records and manage nonexpendable personal property in accordance with 14 CFR 1260.134. During Property Control System Analyses (PCSA), ONR will check the recipient's understanding and test compliance of property management requirements, including the accuracy of recipient property reports. ONR will provide one copy of each PCSA Report to the appropriate NASA center industrial property officer.

(ii) ONR will investigate and notify NASA as appropriate for any unauthorized property acquisitions by the recipient. See the provision at § 1260.27.

(iii) ONR will notify the cognizant grant officer and industrial policy officer when property is lost, damaged or destroyed.

(iv) Under no circumstances will Government property be disposed without instructions from NASA.

(v) Prior to disposition, except when returned to NASA or reutilized on other NASA programs, ONR will ensure all NASA identifications are removed or obliterated from property, and hard drives of computers are cleared of sensitive or NASA owned/licensed software/data.

§ 1260.71 Supplements and renewals.

(a) A NASA grant officer can unilaterally make minor or administrative changes to a grant; e.g., Reports Substitution (§ 1260.55) and Withholding (§ 1260.56).

(b) To ensure timely completion and closeout of grants, renewal proposals to continue the same effort at the same institution that are accepted for award by NASA will be awarded as new grants versus continuation of the existing grant.

(1) When work under a grant is to be continued through an extension, or through a renewal of the work under a new grant, the continuation effort should be instituted concurrent with the original expiration date. When possible, the period of performance should be continuous with the prior grant period of performance. The extension or a renewal of a grant (see § 1260.13(a)) beyond the original expiration date is a unilateral decision by NASA based upon availability of funds, continued research relevance, and progress made by the recipient.

(2) To insure uninterrupted programs, the technical office should forward to the grant office a completed award package, including a funded procurement request, technical evaluation of the proposed budget, and other support documentation, at least 29 days before the expiration of the funded period.

(c) Requests by the recipient to have a grant modified must be in writing to the grant officer. Prior approvals and changes are detailed in § 1260.125.

(d) A no-cost extension can be issued by the recipient as detailed in paragraph (b) of the provision at § 1260.23, Extensions, and § 1260.125(e). NASA reserves the right to disapprove the extension request if the requirements set forth at § 1260.125(e)(2) are not met, including if the extension request is not received ten days prior to the grant expiration date.

(e) When two or more actions are completed on a single supplement, the supplement will reflect the effective date of the earliest action.

§ 1260.72 Adherence to original budget estimates.

(a) Although NASA assumes no responsibility for budget overruns, the recipient may spend grant funds without strict adherence to individual allocations within the proposed budgets, except that recipients must comply with prior approval requirements for property and subcontracts as provided in §§ 1260.27 and 1260.33.

(b) The revision of budgets and program plans are covered in § 1260.125.

§ 1260.73 Transfers, novations, and change of name agreements.

(a) When the principal investigator changes organizational affiliation and desires support for the research at a new location, (*i.e.*, for the grant to be transferred), the grant officer should first consult with the institution that originally received the grant to ascertain whether an acceptable replacement

principal investigator can be substituted to complete the research effort. The final decision on whether an acceptable replacement is available, or that the research effort should follow the original principal investigator to the new location, is at the discretion of the NASA technical Officer. If the decision is made to transfer the grant, the grant at the original institution must be terminated, and a new proposal must be submitted to NASA via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

(b) Novation and change of name agreements are administrative actions requiring the involvement of the grant officer. Novations are legal instruments under which obligations of an organization, (including the performance of grants), are assumed by a new organization arising out of a transfer of assets, usually as a result of a merger or acquisition by the new organization. Change of name agreements are legal instruments executed by an organization and NASA that recognizes the legal change of name of the organization without disturbing the original rights or obligations of the parties. Procedures for completing novation and change of name agreements are set forth at FAR subpart 42.12. All novation agreements and change of name agreements of the recipient, prior to execution, shall be reviewed by legal counsel for legal sufficiency. It is recommended that the cognizant ONR office be contacted to determine responsibilities to complete novation or change of name agreements.

§ 1260.74 Property use, disposition, and vesting of title.

(a) Approval for acquisition of property shall conform to the following procedures:

(1) Providing existing government equipment or property, or allowing acquisition of property by a grant recipient, should only be allowed in situations where the recipient justifies the need for the property and cannot carry out the effort with existing property already in the possession of the recipient.

(2) In accordance with OMB Circulars A-21 and A-122, prior approval of property acquisitions is required for special purpose equipment with a unit cost over \$5,000, general purpose equipment with a unit cost over \$5,000,

(unless a lower threshold has been established by the recipient), or coherent systems (as defined in § 1260.74(e)) with a value of over \$5,000. Grant awards under the Federal Demonstration Partnership are exempt from this requirement. The NASA grant officer will retain authority for approving the expenditure of grant funds for the acquisition of such equipment. Requests by grant recipients for the acquisition of equipment shall be supported by written documentation setting forth the description, purpose, and acquisition value of the equipment, and include a written certification that the equipment will be used exclusively for research. (A change in the model number of a prior approved piece of equipment does not require re-submission for that item.) NASA grant officers shall not approve the expenditure of grant funds for the acquisition of equipment unless the recipient's justification for the equipment demonstrates that the equipment will be used exclusively for research activities.

(b) Vesting of title to property acquired by the recipient shall conform to the following procedures:

(1) For awards to educational institutions and non-profit organizations, special purpose and general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the recipient) acquired by the recipient under a grant or cooperative agreement for the purpose of research shall be titled to the recipient as "exempt" equipment as set forth at § 1260.133(b). The recipient shall have no further obligation or accountability to the Federal Government for the use or disposition of "exempt" property, including reporting requirements. Special purpose and general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the recipient) acquired by the recipient under a grant or cooperative agreement for non-research work shall be titled to the recipient in accordance with § 1260.134.

(2) For awards to commercial organizations, the following property procedures will apply:

(i) Acquisition of special purpose equipment costing in excess of \$5,000 and not included in the approved proposal budget requires the prior approval of the grant officer unless the item is merely a different model of an item shown in the approved proposal budget.

(ii) Recipients may not purchase, as a direct cost to the grant, items of general purpose equipment, examples of which

include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the recipient requests an exception, the recipient shall submit a written request for grant officer approval, prior to purchase by the recipient, stating why the recipient cannot charge the general purpose equipment to indirect costs.

(iii) Under no circumstances shall grant 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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 31. 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 31. A final report is required within 30 days after expiration of the agreement.

(c) Equipment with a unit price of \$5,000 or less (unless a lower threshold has been established by the recipient) is properly classified as "supplies," is not subject to transfer to the Agency, and will be titled to the recipient in accordance with § 1260.135.

(d) Title to Federally-owned property remains with the Government, and is subject to the following additional requirements:

(1) In accordance with Public Law 94-519, NASA will not acquire property from other agencies for use on NASA grants.

(2) Government property provided to a grant recipient for use under a grant will be identified through inclusion of the special condition at § 1260.66, Listing of Reportable Equipment and Other Property.

(3) When Federally-owned property is reported excess by a recipient, the administrative grant officer will report the equipment to the center industrial property officer, who will consult with the technical officer concerning property disposition.

(4) NASA policy encourages the donation of existing, excess NASA property to nonprofit organizations whose primary purpose is the conduct of scientific research.

(e) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities, and their separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes recipient-owned components, the property will be considered to be exempt. The requirement for agreement regarding NASA's retention of its option to take title shall further apply where it is expected that one or more recipient-acquired components costing \$5,000 or less will be fabricated into a single coherent system costing in excess of \$5,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

(f) Property administration and plant clearance for all grants and cooperative agreements will be delegated to the appropriate ONR office.

(g) NASA grant officers will provide copies of property related grant documentation to the center industrial property officer and to the Office of Naval Research (at time of award or modification) when the NASA program office elects to retain title to an existing item of Government property, to furnish the property to the recipient in lieu of donation, or to take title to property acquired by the recipient. When NASA acquires title to items of recipient acquired equipment or when NASA transfers an item of Government property to a recipient as Federally owned property, the NASA grant officer

shall notify the cognizant NASA center financial management officer, the industrial property officer and Office of Naval Research to ensure proper entries in financial and property accounting records.

§ 1260.75 Summary of report requirements.

(a) Report responsibilities of the grant officer are set forth as follows:

(1) The grant officer is responsible for submitting the Individual Procurement Action Report (NF 507) for all grant and cooperative agreement actions.

(2) The Committee on Academic Science and Engineering (CASE) Report (NF 1356), for grants and cooperative agreements awarded to educational institutions, is submitted by the program office with the basic award procurement request and completed by the grant officer. The grant officer should initiate an amendment to the NF 1356 whenever the principal investigator or the technical officer changes.

(b) Intermediate report responsibilities of the recipient are as follows:

(1) The Federal Cash Transactions Report (SF 272) shall be submitted by the recipient, in accordance with § 1260.26(a), as a condition of receiving advance payments. Instructions and answers to payment questions will be provided by the Financial Management Office of the Center that issued the grant. (see § 1260.152.)

(2) The annual Inventory Report of Federally Owned Property in Custody of the Recipient will be submitted by the recipient as required by § 1260.27(e). The listing shall include information specified in § 1260.134(f) together with beginning and ending dollar value totals for the reporting period. Negative reports (*i.e.*, where no property has been acquired or provided, or where all acquired property has been titled to the recipient as exempt) are not required. Please note that any property acquired by the recipient and not titled to the recipient as exempt, must be reported, even when titled to the recipient as non-exempt property in accordance with the procedures set forth at § 1260.134.

(3) A Progress Report shall be submitted in accordance with §§ 1260.22 and 1260.151. Recipients are not required to submit more than the original and two copies. At the request of the technical officer, technical reports can be submitted as new findings are made rather than on a predetermined time schedule, by use of the special condition at § 1260.55, entitled "Reports Substitution."

(4) An Educational Activity Report is required annually for education grants in accordance with § 1260.22. The report is due 60 days prior to the anniversary date of the grant or cooperative agreement.

(5) A Report of Joint NASA/Recipient Inventions is required for all grants and cooperative agreements, as applicable, in accordance with § 1260.28.

(6) A Disclosure of Subject Invention is required for all grants and cooperative agreements, as applicable, in accordance with § 1260.28. The reporting of the invention shall be made within two months after the inventor discloses it to the recipient, and will be reported on NASA Form 1679 Disclosure of Invention and New Technology (Including Software) in accordance with the procedures set forth under § 1260.28.

(7) An Election of Title to a Subject Invention is required for all grants and cooperative agreements, as applicable, in accordance with § 1260.28. The notice is due within 1 year after disclosure of the subject invention if a statutory bar exists, otherwise within 2 years.

(8) A Listing of Subject Inventions is required for all grants and cooperative agreement, in accordance with § 1260.28. The listing is due annually.

(9) A Notification of Decision to Forego Patent Protection is required for all grants and cooperative agreements, as applicable, in accordance with § 1260.28. The notification is due 30 days before the expiration of the response period.

(10) A Utilization of Subject Invention Report is required for all grants and cooperative agreements, as applicable, in accordance with § 1260.28. The report is due annually.

(11) A Notice of Proposed Transfer of Technology is required for all grants and cooperative agreements, as applicable, in accordance with § 1260.30. The notice is required prior to transferring technology to a foreign firm or institution.

(12) An Annual NASA Form 1018, NASA Property in the Custody of Contractors, is required for all grants and cooperative agreements with commercial organizations. The reports are due October 31st of each year. Negative reports (*i.e.* no reportable property) are required.

(c) Final report responsibilities of the recipient are as follows:

(1) A Subject Inventions Final Report is required for all grants and cooperative agreements, as applicable, in accordance with § 1260.28. The report is due within 90 days after the expiration of the grant or cooperative agreement.

(2) A properly certified Final Federal Cash Transactions Report, SF 272, is required from the recipient for each grant, in accordance with §§ 1260.26(a) and 1260.152. The report is due within 90 days after the expiration of the grant or cooperative agreement.

(3) A Summary of Research is required for all research grants in accordance with § 1260.22. Citation of publications resulting from research, or abstracts thereof, may serve as all or part of the Summary of Research. The Summary of Research shall also include a complete list of all subject inventions (or negative statement) required to be disclosed that resulted from the work (see the provision at § 1260.28).

(4) A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, is required for all grants and cooperative agreements, where property or equipment has been provided by the government or acquired by the recipient, § 1260.27. The report is due within 60 days after the expiration of the grant or cooperative agreement. Negative reports (*i.e.*, where no property has been acquired or provided) are required.

(5) A Final Educational Activity Report is required for all education grants or cooperative agreements. The report is due within 90 days after the expiration of the grant or cooperative agreement.

(6) A Faculty Advisor Survey is required for all training grants. The report is due from the student's faculty advisor within 60 days after the expiration of the training grant.

(7) A Summary of Research is required for all training grants. The report is due from the student within 90 days after the expiration of the training grant.

(8) An Administrative Report is required for all training grants. The report is due within 90 days after the expiration of the training grant.

(9) A Student Evaluation Form is required for all training grants. The form is due from the student within 90 days after the expiration of the training grant.

(10) A Final NASA Form 1018, NASA Property in the Custody of Contractors, is required for all grants and cooperative agreements with commercial organizations. The report is due within 30 days after the expiration of the grant or cooperative agreement.

(d) To clarify report requirements to grant and cooperative agreement recipients, the grant officer will include the "Required Publications and Reports" form (Exhibit G to subpart A of this part 1260) as part of the award document.

§ 1260.76 Termination and enforcement.

(a) Suspension or termination of a grant prior to the planned expiration date must be reserved for exceptional situations that cannot be handled any other way (see § 1260.160).

(b) The Director, Program Operations Division (Code HS), shall provide to the General Services Administration information concerning all NASA debarments, suspensions, determinations of ineligibility, and voluntary exclusions of persons in accordance with 14 CFR 1265.505.

(c) Remedies for Noncompliance are delineated in § 1260.162.

(d) Failure of the recipient to provide a required report can result in the Agency and the public being denied information about grant activities, NASA officials having less information for making decisions, grant closeout being delayed, and confidence being undermined as to whether the recipient will meet the requirements under other grants. Because NASA grants provide for advance payments, a recipient could be fully paid before final reports are due. At this point, it is too late to withhold payment on the existing grant.

(e) Consistent with §§ 1260.122(h) and 1260.162(a), NASA may suspend or terminate advance payments from recipients that fail to comply with reporting requirements. To remedy failure to furnish timely reports, special condition at § 1260.56, Withholding, should be used when awarding a new grant or modifying an existing grant with non-responsive organizations.

(1) Special condition at § 1260.56 allows the grant officer to instruct the Financial Management Office to suspend or terminate advance payments under an institutions letter of credit pending receipt of the satisfactorily completed reports required in § 1260.75.

(2) The grant officer may waive the withholding requirement when the recipient has taken corrective action that makes withholding unnecessary. To release for payment the amount withheld, grant officers shall send a memorandum to their Financial Management Office.

§ 1260.77 Closeout procedures.

Closeout is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by both the recipient and NASA and no further activity is expected (see § 1260.171).

(a) Closeout will begin within 90 days after the expiration date of the grant. NASA's goal for closeout to be completed is within 180 days after the expiration of the grant.

(b) Those who are designated to receive NASA reports (except for CASI, which only acknowledges receipt) must provide certification to the NASA grant officer, and to ONR when delegated, that the reports have been received and satisfactorily completed. Electronic certifications are acceptable. See §§ 1260.75 and 1260.171(a). The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory.

(c) When ONR has been delegated closeout and has completed its actions, the NASA grant officer is to receive from ONR all of the following:

(1) Certification that all required reports have been received and approved. However, when a NASA technical officer does not respond to a third request from ONR to provide a certification for a Summary of Research, ONR may provide a "qualified acceptance statement" in lieu of the required certification, after providing written notification to the NASA grant officer.

(2) A DD Form 1593 Contract Administration Completion Record (or equivalent electronic notification), without supporting or backup documents, indicating property administration is complete.

(3) An original, signed DD Form 1594 Contract Completion Statement.

(d) A grant is administratively complete and ready for closeout when:

(1) Property disposition has been completed.

(2) Certifications for all reports have been received.

(3) A DD Form 1594 has been received, when delegated.

(4) Payments have been made for allowable reimbursable costs, and refunds have been received for any balance of unobligated cash advanced that is not authorized to be retained for use on other grants (see §§ 1260.171 through 1260.173).

(e) Grants will not be closed out if litigation or an appeal is pending, or when termination action has not been completed.

(f) Records will be retained in accordance with § 1260.153 and NPG 1441.1, Record Retention Schedules. As set forth in the NPG, grant files are generally retired to the Federal Records Center 2 years after completion of the grant or agreement, and destroyed when 6 years, 3 months old.

Appendix to Subpart A to Part 1260— Listing of Exhibits

Exhibit A—Budget Summary

Exhibit B—Standard Grant and Cooperative Agreement Cover Page
Exhibit C—Provisions
Exhibit D—Federal Demonstration Partnership Terms and Conditions
Exhibit E—Special Conditions for Cooperative Agreements between NASA and the Commercial Space Centers
Exhibit F—NASA 1674 Letter of Delegation for the Administration of Grants and Cooperative Agreements
Exhibit G—Required Publications and Reports

Note: Exhibits are available at NASA Headquarters, Code HC, Washington, D.C. 20546.

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

General

§ 1260.101 Purpose.

This subpart implements OMB Circular No. A-110 and establishes uniform administrative requirements for NASA grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. NASA shall not impose additional or inconsistent requirements, except as provided in §§ 1260.104 and 1260.114 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 1260.102 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

(1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges,

such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means a grant or cooperative agreement that provides support or stimulation to accomplish a public purpose. Awards include research grants, training grants, facilities grants, educational grants, and cooperative agreements in the form of money or property in lieu of money, by NASA to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

Contract means a procurement contract under an award, and a procurement subcontract under a recipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by NASA.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Disallowed costs means those charges to an award that NASA determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of any Federal awarding agency that, as determined by the head

thereof, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where a Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when NASA funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

NASA means the National Aeronautics and Space Administration (NASA), including its authorized representatives.

Obligations mean the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subcontractors. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of

indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subcontractors and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 1260.124(c) and (f)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of NASA funds is not program income. Except as otherwise provided in the regulations in this subpart or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which NASA sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intellectual property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving an award directly from NASA to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited

to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subcontractors, or contractors or subcontractors of recipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term "research" also included activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold.

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" of this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Supplies means all personal property excluding equipment, intellectual property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding

agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension means an action by NASA that temporarily withdraws NASA sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by NASA. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 and 12689, "Debarment and Suspension."

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by NASA that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 1260.103 Effect on other issuances.

For awards subject to this subpart, the requirements of this subpart apply, except to the extent that any administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials are required by statute, or are authorized in accordance with the deviations provision in § 1260.104.

§ 1260.104 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this subpart when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this subpart shall be permitted only in unusual circumstances. NASA may apply more restrictive requirements to a class of recipients when approved by OMB. NASA may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by NASA. See § 1260.6(c).

§ 1260.105 Subawards.

Unless sections of this subpart specifically exclude subrecipients from coverage, the provisions of this subpart shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of 14 CFR part 1273, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Pre-Award Requirements

§ 1260.110 Purpose.

Sections 1260.111 through 1260.117 prescribe forms and instructions and other pre-award matters to be used in applying for NASA awards.

§ 1260.111 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, NASA shall decide on the appropriate award instrument (*i.e.* grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* NASA notifies the public of its intended funding priorities for discretionary grant programs through Broad Agency Announcements, Cooperative Agreement Notices, Agency-Wide program announcements, and other approved forms of announcements.

§ 1260.112 Forms for applying for Federal assistance.

(a) NASA shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the NASA in place of or as a supplement to the Standard Form 424 (SF 424) series.

(b) Applicants shall use those forms and instructions prescribed by NASA in § 1260.10.

1260.113 Debarment and suspension.

NASA and recipients shall comply with the nonprocurement debarment and suspension rule, 14 CFR part 1265, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)," implementing Executive Orders 12549 and 12689, "Debarment and Suspension." This rule restricts contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 1260.114 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this subpart, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, NASA may impose additional requirements as needed. Such applicant or recipient will be notified in writing as to the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 1260.115 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S.

trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. NASA follows the provisions of Executive Order 12770, "Metric Usage in Federal Government Programs." NASA's policy with respect to the metric measurement system is stated in NASA Policy Directive (NPD) 8010.2, Use of the Metric System of Measurement in NASA Programs.

§ 1260.116 Resource Conservation and Recovery Act (RCRA).

Under the RCRA (Pub. L. 94-580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002 of the RCRA (42 U.S.C. 6962). Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 1260.117 Certifications and representations.

Unless prohibited by statute or codified regulation, NASA will allow recipients to submit certain certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Post-Award Requirements

Financial and Program Management

§ 1260.120 Purpose of financial and program management.

Sections 1260.121 through 1260.128 prescribe standards for financial management systems, methods for

making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 1260.121 Standards for financial management systems.

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, it should be noted that it is generally not appropriate to develop unit cost information.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 1260.152. If NASA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury

for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, NASA, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) NASA may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 1260.122 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b)(1) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 1260.121.

(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or

project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by NASA to the recipient.

(1) Advance payments will be made by electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(d) [Reserved. Not used by NASA.]

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. NASA may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project. When the reimbursement method is used, NASA shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(f) If a recipient cannot meet the criteria for advance payments and NASA has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, NASA may provide cash on a working capital advance basis. Under this procedure, NASA shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, NASA shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subcontractor to meet the subcontractor's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to an interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, NASA will not withhold payments for proper charges made by recipients at any time during the project period unless the conditions in paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or NASA reporting requirements.

(2) The recipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, NASA may, upon

reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, NASA shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless the conditions in paragraphs (k)(1), (2), or (3) of this section apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) Interest earned on Federal advances deposited in interest-bearing accounts in excess of \$250 per year shall be remitted annually to Department of Health and Human Services (DHHS), Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. In accordance with 31 CFR part 206, interest should be remitted electronically through the Automated Clearing House (ACT) to DHHS.

Recipients without this capability may make the remittance by check. In either case, the remittance should be payable to DHHS and should indicate the recipient's Entity Identification Number (EIN) and reason, *i.e.*, "Interest earned."

(m) Except as noted elsewhere in this subpart, only the following forms shall be authorized for the recipients in

requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. [Reserved. Not used by NASA.]

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. The SF-271 may be used for requesting reimbursement for NASA construction programs.

§ 1260.123 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by NASA.

(7) Conform to other provisions of this subpart, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the cognizant NASA grant officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If NASA authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, NASA may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and

unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if the conditions in paragraph (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that NASA has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General

Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 1260.124 Program income.

(a) The standards set forth in this section shall be used to account for program income related to projects financed in whole or in part with Federal funds.

(b) Program income earned during the project period shall be retained by the recipient and added to funds committed to the project by NASA and the recipient, and used to further eligible project or program objectives, unless NASA indicates in the terms and conditions of the award another alternative to account for program income or the recipient is subject to special award conditions, as indicated in § 1260.114.

(c) Unless program regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(d) Unless program regulations or the terms and conditions of the award provide otherwise, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(e) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 1260.130 through 1260.137).

(f) Unless program regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned

from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 1260.125 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon requirements in the regulations in this subpart. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from NASA for the following program or budget related reasons, except the item in paragraph (c)(5) of this section, which is waived by NASA.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

Notice: NASA waives prior approval of such revisions.

(6) The inclusion of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Institutions of Higher Education"; OMB Circular A-122, "Cost Principles for Non-Profit Organizations"; 45 CFR part 74 appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals"; or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved

awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items will be imposed unless a deviation has been approved by OMB.

(e) NASA has determined to waive the following cost-related and administrative prior written approvals otherwise required by OMB Circulars A-21, A-110 and A-122 to allow recipients to do the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of NASA. All pre-award costs are incurred at the recipient's risk (*i.e.*, NASA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify NASA in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Unless directed otherwise by the grant officer, carry forward unobligated balances to subsequent funding periods.

(f) Program regulations may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which NASA's share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by NASA. NASA will ensure that any such program regulation requirements are announced in program guidelines or are incorporated as special conditions in award documents. No program regulation shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of

this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from NASA for budget revisions whenever the conditions in paragraphs (h) (1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 1260.127.

(i) No other prior approval requirements for specific items will be imposed unless a deviation has been approved by OMB.

(j) When NASA makes an award that provides support for both construction and nonconstruction work, NASA requires the recipient to request prior approval from NASA before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, NASA requires recipients to notify NASA in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless NASA indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, NASA shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, NASA shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 1260.126 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1966 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1966 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of NASA.

(d) Commercial organizations shall be subject to the audit requirements of NASA or the prime recipient as incorporated into the award document.

§ 1260.127 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 1260.128 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by NASA.

Property Standards

§ 1260.130 Purpose of property standards.

Sections 1260.131 through 1260.137 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project

supported by a Federal award. Recipients shall observe these standards under awards and NASA will not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 1260.131 through 1260.137.

§ 1260.131 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided for property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 1260.132 Real property.

Unless otherwise provided by statute, the requirements concerning the use and disposition of real property acquired in whole or in part under awards are as follows:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of NASA.

(b) The recipient shall obtain written approval by NASA for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.*, awards) or programs that have purposes consistent with those authorized for support by NASA.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from NASA or its successor Federal awarding agency. NASA shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by NASA and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales

proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 1260.133 Federally-owned and exempt property.

(a) *Federally-owned property.*

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to NASA. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to NASA for further Federal agency utilization.

(2) If NASA has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless NASA has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by NASA.

(b) *Exempt property.* Under the authority of the Childs Act, 31 U.S.C. 6301 to 6308, NASA has determined to vest title to property acquired with Federal funds in the recipient without further obligation to NASA, including reporting requirements.

§ 1260.134 Equipment.

(a) For grants and cooperative agreements for the purpose of research, NASA's policy is to vest title to property acquired with Federal funds in the recipient without further obligation to NASA, including reporting requirements, as set forth at § 1260.33(b). For grants and cooperative agreements for non-research purposes, and in the exceptional circumstance where a deviation is requested for a grant or cooperative agreement for research to not vest title in the recipient as exempt, equipment shall vest in the recipient subject to conditions of this section. These policies are not

applicable to grants and cooperative agreements with commercial firms (see § 1260.74(b)(2) and § 1274.401.)

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of NASA. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by NASA, then
(2) Activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by NASA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by NASA. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of NASA.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.
(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates NASA for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify NASA.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient

shall request disposition instructions from NASA. NASA shall determine whether the equipment can be used to meet NASA's requirements. If no requirement exists within NASA, the availability of the equipment shall be reported to the General Services Administration by NASA to determine whether a requirement for the equipment exists in other Federal agencies. NASA shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse NASA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by NASA for such costs incurred in its disposition.

(4) NASA may reserve the right to transfer the title to the Federal Government or to a third party named by NASA when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) NASA shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If NASA fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate. When NASA exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 1260.135 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 1260.136 Intangible property.

(a) The recipient may assert copyright in any work that is copyrightable and was created, or for which copyright ownership was purchased, under an award. NASA is granted a royalty-free, nonexclusive and irrevocable right to reproduce, publish, prepare derivative works or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) NASA has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, NASA shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If NASA

obtains the research data solely in response a FOIA request, NASA may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by NASA, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (*e.g.*, laboratory samples). Research data does not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subcontract vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of NASA. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 1260.134(g).

(f) Due to the substantial involvement on the part of NASA under a cooperative agreement, intellectual

property may be produced by Federal employees and NASA contractors tasked to perform NASA assigned activities. Title to intellectual property created under the cooperative agreement by NASA or its contractors will initially vest with the creating party. Certain rights may be exchanged with the recipient.

§ 1260.137 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. NASA may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 1260.140 Purpose of procurement standards.

Sections 1260.141 through 1260.148 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by NASA upon recipients, unless specifically required by Federal statute or executive order or approved in accordance with the deviation procedures of § 1260.6.

§ 1260.141 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to NASA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 1260.142 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 1260.143 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 1260.144 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that the conditions in paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of NASA awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the

Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 14 CFR part 1265, the implementation of Executive 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 small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 1260.145 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways,

including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 1260.146 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 1260.147 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 1260.148 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or

subcontracts exceeding \$100,000, NASA may accept the bonding policy and requirements of the recipient, provided the NASA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described 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."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this subpart, as applicable.

Reports and Records

§ 1260.150 Purpose of reports and records.

Sections 1260.151 through 1260.153 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms.

They also set forth record retention requirements.

§ 1260.151 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subcontract, function or activity supported by the award. Recipients shall monitor subcontracts to ensure subcontractors have met the audit requirements as delineated in § 1260.126.

(b) The terms and conditions of the award shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in 1260.151(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. NASA may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify NASA of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) NASA may make site visits, as needed.

(h) NASA shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 1260.152 Financial reporting.

(a) When funds are advanced to recipients, each recipient is required to submit the SF 272, Report of Federal Cash Transactions, and, when necessary, its continuation sheet, SF 272a. NASA uses this report to monitor cash advanced to the recipient and obtain disbursement information for each agreement with the recipient.

(b) NASA requires forecasts of the recipient's cash requirements for each of the four months following the quarter being reported, in the "Remarks" section of the report. There will be a phase-in term for NASA adoption of an automated 272 system not requiring the forecast estimates. It is anticipated that this forecast requirement will be deleted no later than October 1, 2001.

(c) Recipients are required to submit the original of the report to the Financial Management Office of the NASA Center which issued the agreement 15 working days following the end of each Federal fiscal quarter. Copies will be furnished to the appropriate grant officer.

§ 1260.153 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. NASA shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by NASA. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are 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 § 1260.153(g).

(c) NASA authorizes that copies of original records may be substituted for the original records.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall place no restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to NASA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year

retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 1260.160 Purpose of termination and enforcement.

Sections 1260.61 and 1260.62 set forth uniform suspension, termination and enforcement procedures.

§ 1260.161 Termination.

(a) Awards may be terminated in whole or in part only if the conditions in paragraph (a)(1), (2) or (3) of this section apply.

(1) By NASA, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By NASA with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to NASA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.

However, if NASA determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 1260.171(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 1260.162 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, NASA may, in addition to imposing any of the special conditions outlined in § 1260.114, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by NASA.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, NASA shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless NASA expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the conditions in paragraph (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and 14 CFR part 1265 (see § 1260.113).

After the Award Requirements

§ 1260.170 Purpose.

Sections 1260.171 through 1260.173 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1260.171 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. NASA may approve extensions when requested by the recipient.

(b) Unless NASA authorizes an extension, a recipient shall liquidate all obligations incurred under the award

not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) NASA shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that NASA has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, NASA shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 1260.131 through 1260.137.

(g) In the event a final audit has not been performed prior to the closeout of an award, NASA shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 1260.172 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of NASA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 1260.126.

(4) Property management requirements in §§ 1260.131 through 1260.137.

(5) Records retention as required in § 1260.153.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the NASA and the recipient, provided the responsibilities of the recipient referred to in § 1260.173(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 1260.173 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be

entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, NASA may reduce the debt by the provisions of paragraph (a)(1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, NASA shall charge interest on an overdue debt in accordance with 4 CFR chapter II, "Federal Claims Collection Standards."

Appendix A to Subpart B of Part 1260—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity.* All contracts shall contain a provision requiring compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c).* All contracts in excess of \$2,000 for construction or repair awarded by recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7).* When required by Federal program legislation, all construction contracts awarded by the recipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued

by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the NASA.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).* Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under subsection 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement.* Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.* Contracts of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).* Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by

31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*. No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

2. Part 1274 is revised to read as follows:

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

Subpart A—General

Sec.

- 1274.101 Purpose.
- 1274.102 Definitions.
- 1274.103 Effect on other issuances.
- 1274.104 Deviations.
- 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

Subpart B—Pre-Award Requirements

- 1274.201 Purpose.
- 1274.202 Solicitations and proposals.
- 1274.203 Intellectual property.
- 1274.204 Evaluation and selection.
- 1274.205 Award procedures.
- 1274.206 Document format and numbering.
- 1274.207 Distribution of cooperative agreements.

Subpart C—Administration

1274.301 Delegation of administration.

- 1274.302 Transfers, novations, and change of name agreements.

Subpart D—Government Property

- 1274.401 Government property.

Subpart E—Procurement Standards

- 1274.501 Subcontracts.

Subpart F—Reports and Records

- 1274.601 Retention and access requirements for records.

Subpart G—Suspension or Termination

- 1274.701 Suspension or termination.

Subpart H—After-the-Award Requirements

- 1274.801 Purpose.
- 1274.802 Closeout procedures.
- 1274.803 Subsequent adjustments and continuing responsibilities.

Subpart I—Provisions and Special Conditions

- 1274.901 Other provisions and special conditions.
- 1274.902 Purpose.
- 1274.903 Responsibilities.
- 1274.904 Resource sharing requirements.
- 1274.905 Rights in data.
- 1274.906 Designation of new technology representative and patent representative.
- 1274.907 Disputes.
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- 1274.909 Term of this agreement.
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- 1274.912 Patent rights—retention by the Recipient (large business).
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- 1274.924 Civil rights.
- 1274.925 Subcontracts.
- 1274.926 Clean Air-Water Pollution Control Acts.
- 1274.927 Debarment and suspension and Drug-Free Workplace.
- 1274.928 Foreign national employee investigative requirements.
- 1274.929 Restrictions on lobbying.
- 1274.930 Travel and transportation.
- 1274.931 Electronic funds transfer payment methods.
- 1274.932 Retention and examination of records.
- 1274.933 Summary of recipient reporting responsibilities.
- 1274.934 Safety.

Appendix to Part 1274—Listing of Exhibits

Exhibit A to Part 1274—Contract Provisions
Exhibit B to Part 1274—Reports

Authority: 31 U.S.C. 6301 to 6208; 42 U.S.C. 2451 *et seq.*

Subpart A—General

§ 1274.101 Purpose.

(a) This part establishes uniform administrative requirements for NASA cooperative agreements awarded to commercial firms. Cooperative agreements are ordinarily entered into with commercial firms to—

- (1) Support research and development;
- (2) Provide technology transfer from the Government to the recipient; or
- (3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness.

(b) An award may not be made to a foreign government. Award to foreign firms is not precluded. The approval of the Associate Administrator for Procurement is required to exclude foreign firms from submitting proposals.

§ 1274.102 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Associate Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout. The process by which 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.

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 covers only cooperative agreements with commercial firms. Cooperative agreements with universities and non-profit organizations are covered by 14 CFR part 1260.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government except that the recipient's contribution may be reimbursable under other Government awards as allowable IR&D costs pursuant to 48 CFR (NFS) 1831.205–18.

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Days. Calendar days, unless otherwise indicated.

Government furnished equipment. Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a recipient and equipment procured by the recipient with Government funds under a cooperative agreement.

Grant Officer. A Government employee who has been delegated the authority to negotiate, award, or administer grants or cooperative agreements. A Contracting Officer may serve as a Grant Officer if authorized by installation procurement regulations.

Incremental funding. A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, a consortium, a partnership, etc.

Resource contribution. The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

Support contractor. A NASA contractor performing part or all of the NASA responsibilities under a cooperative agreement.

Suspension. An action by NASA or the recipient that temporarily discontinues efforts under an award, pending corrective action or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 and 12689, "Debarment and Suspension."

Technical officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement. A Contracting Officer's Technical Representative may serve as a Technical Officer.

Termination. The cancellation of a cooperative agreement in whole or in part, by either party at any time prior to the date of completion.

§ 1274.103 Effect on other issuances.

For awards subject to this subpart, the requirements of this subpart apply, except to the extent that any administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials are required by statute, or are authorized in accordance with the deviations provision in 1274.104.

§ 1274.104 Deviations.

(a) The Associate Administrator for Procurement may grant exceptions for classes of or individual cooperative agreements from the requirements of this part when exceptions are not prohibited by statute.

(b) A deviation is required for any of the following:

(1) When a prescribed provision set forth in this part for use verbatim is modified or omitted.

(2) When a provision is set forth in this part, but not prescribed for use verbatim, and the installation substitutes a provision which is

inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this part, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this part upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) Requests for authority to deviate from this part will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum:

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought.

(2) Detailed rationale for the request, including any pertinent background information.

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request(s).

(5) A copy of legal counsel's concurrence or comments.

§ 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

(a) As soon as possible after the initial decision is made by a Headquarters program office or Center procurement personnel to use the CAN process, the cognizant program office or procurement office shall notify the Associate Administrator for Procurement (Code HS) of the intent to use a CAN in all cases where the total Government funds to be awarded in response to CAN proposals is expected to equal or exceed \$10 million. All such notifications, as described in this section, shall be concurred in by the Procurement Officer. This requirement also applies in those cases where an unsolicited proposal is received and a decision is made to award a cooperative agreement in which the recipient (or one or more members of a "team" of recipients) is a commercial firm and the total Government funds are expected to equal or exceed \$10 million.

(b) The required notification is to be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: can@hq.nasa.gov. The notification must include the following information, as a minimum:

(1) Identification of the cognizant center and program office,

(2) Description of the proposed program for which proposals are to be solicited,

(3) Rationale for decision to use a CAN rather than other types of solicitations,

(4) The amount of Government funding to be available for awards,

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN,

(6) The percentage of cost-sharing to be required,

(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 1274.202(f)), and

(9) If the cooperative agreement is for programs/projects that provide aerospace products or capabilities, (i.e., provide space and aeronautics, 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 5 working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described,

(2) Whether Code HS will require review and approval of the CAN before its issuance,

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)), and

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or center may proceed with release of the CAN and award of the cooperative agreements as described.

Subpart B—Pre-Award Requirements

§ 1274.201 Purpose.

Sections 1274.202 through 1274.207 prescribe forms and instructions and address other pre-award matters.

§ 1274.202 Solicitations and proposals.

(a) *Competition.* Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible. An award will normally be made as a result of a Cooperative Agreement Notice (CAN) which envisions a cooperative agreement as the award instrument. A Commerce Business Daily synopsis or a synopsis on the NASA Acquisition Internet Service will be used to publicize the CAN.

(b) *Unsolicited proposals.* (1) An award may be made as a result of an unsolicited proposal. The unsolicited proposal must evidence a unique and innovative idea or approach which is not the subject of a current or anticipated solicitation. When a cooperative agreement is awarded as a result of an unsolicited proposal, a Commerce Business Daily synopsis and a synopsis on the NASA Acquisition Internet Service will be used to provide an opportunity for other firms/consortia to express an interest in the agreement unless the exception in 48 CFR (FAR) 5.202(a)(8) applies. Respondents should be given a minimum of thirty days to respond. If interest is expressed, a decision must be made to proceed with the award or to issue a solicitation for competitive proposals.

(2) Prior to an award made as the result of an unsolicited proposal, the award must be approved by the Procurement Officer if NASA's total resource contribution is below \$5 million. Center Director approval is required if NASA's total resource contribution is \$5 million or more. For Headquarters cooperative agreements, approval by the Associate Administrator for Procurement is required if NASA's total resource contribution is \$5 million or more.

(c) *Cost and payment matters.* (1) The expenditure of Government funds by the recipient and the allowability of costs recognized as a resource contribution by the recipient shall be governed by the FAR cost principles, 48 CFR part 31. If the recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows:

(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 Institutions."

(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." Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(2) A substantial resource contribution on the part of the recipient is required. The recipient is expected to contribute at least 50 percent of the total resources required to accomplish the cooperative agreement. Recipient contributions may be either cash or non-cash or both. In those cases in which a contribution of less than 50 percent is anticipated from the recipient, approval of the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50 percent is warranted.

(3) Cooperative agreements are funded by NASA in a fixed amount. Payments in fixed amounts will be made by NASA in accordance with "Milestone Billings" which are discussed in paragraph (c)(4) of this section. If the recipient completes the final milestone, final payment is made, and NASA will have completed its financial responsibilities under the agreement. However, if the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding will be limited to milestone payments already made plus NASA's share of costs required by the recipient to meet commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event shall these additional costs or payment exceed the amount of the next payable milestone billing amount.

(4) Milestone billings is the method of payment to the recipient under cooperative agreements. Performance based milestones are used as the basis of establishing a set of verifiable milestones for payment purposes. Each milestone payment shall be established so that the Government payment is at the same share ratio as the cooperative agreement share ratio. If the recipient is a consortium, the Articles of

Collaboration is required to contain an extensive list of performance based milestones that the consortium has agreed to. Generally, payments should not be made more than once monthly; ideally, payments will be made about every 60 to 90 days but in all cases should be made on the basis of verifiable, significant events as opposed to the passage of time. The last payment milestone should be large enough to ensure that the recipient completes its responsibilities under the cooperative agreement (or funds should be reserved for payment until after completion of the cooperative agreement). The Government technical officer must verify completion of each milestone to the Grant Officer as part of the payment process.

(5) Cooperative agreements may be incrementally funded subject to the following:

(i) The total value of the NASA cash contribution is \$50,000 or more.

(ii) The period of performance overlaps the succeeding fiscal year.

(iii) The funds are not available to fully fund the cooperative agreement at the time of award.

(6) Cost sharing requirements on cooperative agreements with commercial firms are based on section 23 of OMB Circular A-110. Only cash or certain non-cash resources are acceptable sources for the recipient contribution to a cooperative agreement. Acceptable non-cash resources include such items as purchased equipment, equipment, labor, office space, etc. The actual or imputed value of intellectual property such as patent rights, data rights, trade secrets, etc., are not acceptable as sources for the recipient contribution. The Government's cost share should fully reflect the total cost of the cash and non-cash contributions. With respect to the non-cash contribution, a fully burdened cost estimate of personnel, facilities, and other expenses should be utilized. It is recognized that this will be an estimate in some cases, but the cost principles in section 9091-5 of the NASA Financial Management Manual should be adhered to.

(7) Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship.

(8) The recipient's resource share of the cooperative agreement may be allocated as part of its IR&D program.

(9) The CAN must provide a description of the non-cash Government contribution (personnel, equipment,

facilities, etc.) as part of the Government's contribution to the cooperative agreement in addition to funding. The offeror may propose that additional non-cash Government resources be provided under two conditions. First, the offeror is responsible for verifying the availability of the resources and their suitability for their intended purpose and, second, those resources are part of the Government contribution (which must be matched by the recipient) and paid for directly by the awarding organization.

(d) *Consortia as recipients.* (1) The use of consortia as recipients for cooperative agreements is encouraged. Consortia will tend to bring to a cooperative agreement a broader range of capabilities and resources. A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms which normally compete for commercial or Government business or may be made up of firms which perform complementary functions in a given industry. The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(2) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. It should also address to the extent appropriate: Commitments of financial, personnel, facilities and other resources, a detailed milestone chart of consortium activities, accounting requirements, subcontracting procedures, disputes, term of the agreement, insurance and liability issues, internal and external reporting requirements, management structure of the consortium, obligations of organizations withdrawing from the consortia, allocation of data and patent rights among the consortia members, agreements, if any, to share existing technology and data, the firm which is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, employee policy issues, etc.

(3) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process.

(e) *Metric system of measurement.* The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. 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.

(f) *Term of agreement.* 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 a Government cash contribution 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.

§ 1274.203 Intellectual property.

(a) 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) 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) There are five situations in which inventions may arise under a cooperative agreement: recipient inventions, subcontractor inventions, NASA inventions, NASA support contractor inventions, and joint inventions with recipient.

(d)(1) *Recipient inventions.*

(i) A recipient, if a large business, is subject to Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business recipient initially vests with NASA. The recipient may request a waiver under the NASA

Patent Waiver Regulations to obtain title to inventions made under the agreement. Such a request may be made in advance of the agreement (or 30 days thereafter) for all inventions made under the agreement. Alternatively, requests may be made on a case by case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) A recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term "nonprofit organization" is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C.). The Government obtains an irrevocable, nonexclusive, royalty-free license.

(2) *Subcontractor inventions.*

(i) Large business. If a recipient enters a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the agreement to be done in the United States, its possessions, or Puerto Rico, section 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business recipient can (see paragraph (d)(1)(i) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA Installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the recipient, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) Non-profit organization or small business. In the event the recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under

the agreement, the requirements of 35 U.S.C. 200 *et seq.* regarding "Patent Rights in Inventions Made With Federal Assistance," apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(iii) Work outside the United States. If the recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(iv) Notwithstanding paragraphs (d)(2)(i), (ii) and (iii), and in recognition of the recipient's substantial contribution, the recipient is authorized, subject to rights of NASA set forth elsewhere in the agreement, to:

(A) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the recipient may deem necessary, or

(B) If unable to reach agreement pursuant to paragraph (d)(2)(iv)(A) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the recipient. This exception does not change that. The exception does authorize the recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(3) *NASA inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an agreement. Upon timely request, NASA will use its best efforts to grant recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing

license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(4) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under the agreement since the rights obtained by a NASA support contractor could work against the rights needed by the recipient. In the event NASA support contractors are tasked to work under the agreement and inventions are made by support contractor employees, the support contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and Executive Order 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 recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(5) *Joint inventions.* (i) NASA and the recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the recipient as authorized by 35 U.S.C. 202(e). The grant officer negotiating the agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(ii) NASA support contractors may be joint inventors. If a NASA support

contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA Support Contractor Inventions. The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a recipient employee, the NASA support contractor and recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the recipient.

(e) *Licenses to Recipient(s).* (1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, all recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each recipient subject invention, it is only equitable that the recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) Once a recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the recipient, is published in the **Federal Register**, providing the public opportunity for filing written objections for 60 days.

(f) *Preference for United States manufacture.* Despite any other provision, the recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the recipient

as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Associate Administrator for Procurement (Code HS) upon a showing by the recipient that under the circumstances domestic manufacture is not commercially feasible.

(g) *Space Act Agreements.* Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(h) *Data rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, grant officers for the Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (depending on the technology, two to five years after production of the data) may be established after which the data first produced by the recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas need to be covered.

(4) For data, including software, first produced by the recipient under the agreement, the recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled "Publication and Reports." Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.204 Evaluation and selection.

(a) *Evaluation factor.* A single technical evaluation factor is typically used for CANs. That evaluation factor should be one of the following: Providing research and development or technology transfer, enhancing U.S. competitiveness, or developing a capability among U.S. firms. Award to foreign firms is not precluded if the evaluation factor is satisfied. Subfactors could include such things as fostering U.S. leadership, potential to advance

technologies anticipated to enhance U.S. competitiveness, timeliness of proposed accomplishments, private sector commitment to commercialization, identification of specific potential commercial markets, appropriateness of business risk, potential for broad impact on the U.S. technology and knowledge base, level of commitment (contribution of private resources to the project), appropriateness of team member participation and relationships, (this subfactor should include consideration of the participation of an appropriate mix of small business, small disadvantaged business, and women-owned small business concerns, as well as non-profits and educational institutions, including historically black colleges and universities and minority institutions) appropriateness of management planning, relevant experience, qualifications and depth of management and technical staff, quality and appropriateness of resources committed to the project, performance bench marks, technical approach, business approach/resource sharing, past performance, the articles of collaboration, etc.

(b) *Technical evaluation.* (1) Competitive technical proposal information shall be protected in accordance with 48 CFR (FAR) 15.207, Handling Proposals and Information. Unsolicited proposals shall be protected in accordance with 48 CFR (FAR) 15.608, Prohibitions, and 48 CFR (FAR) 15.609, Limited Use of Data.

(i) Selecting officials and grant/contracting 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 selecting official or by the grant/contracting officer.

(ii) No sensitive information shall be disclosed unless the selecting official or the grant/contracting officer has approved disclosure based upon an unequivocal "need-to-know" and the individual receiving the information has signed a Non-Disclosure Certificate (Exhibit E to subpart A of 14 CFR part 1260). All attendees at formal source selection presentations and briefings shall be required to sign an Attendance Roster. The attendance rosters and certificates shall be maintained in

official files for a minimum of six months after award.

(iii) The improper disclosure of sensitive information could result in criminal prosecution or an adverse action.

(2) The technical officer will evaluate proposals in accordance with the criteria in the CAN. Proposals selected for award will be supported by documentation as described in paragraph (c)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(3) The technical evaluation of proposals may include peer reviews. Since the business sense of a cooperative agreement proposal is critical to its success, NASA should reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions. The use of outside evaluators shall be approved in accordance with 48 CFR (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.

(4) Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Organizations submitting unaccepted proposals will be notified in writing.

(c) *Documentation requirements.* For proposals selected for award, the technical officer will prepare and furnish to the grant officer the following documentation:

(1) For a competitively selected proposal, a signed selection statement and technical evaluation based on the evaluation criteria stated in the solicitation.

(2) For an unsolicited proposal, a justification for acceptance of an unsolicited proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the

technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(i) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(ii) Overall scientific or technical merits of the proposal.

(iii) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iv) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(v) Current, open solicitations under which the unsolicited proposal could be evaluated.

(d) *Cost evaluation.* (1) The grant officer and technical team will determine whether the overall proposed cost of the project is reasonable and that the recipient's contribution is valid, verifiable, and available. Commitments should be obtained and verified to the extent practical from the offeror or members of the consortia that the proposed contributions can and will be made as specified in the proposal or statement of work.

(i) If the recipient's verified share on a cooperative agreement equals or exceeds 50 percent of the total cost of the agreement and the total value of the agreement is less than \$5 million, the cost evaluation of the offeror's proposal should focus on the overall reasonableness and timing of the proposer's contribution. Cost or pricing data should not be required and information other than cost or pricing data (defined in 48 CFR (FAR) 15.403-3) should not normally be required.

(ii) If the recipient's share is projected to be less than 50 percent or the total value of the agreement is more than \$5 million, a more in-depth analysis of the proposed costs should be undertaken. Only information other than cost or pricing data should be required. An analysis consistent with 48 CFR (FAR) 15.404-1 through 15.404-2 should be performed.

(2) As part of the evaluation of the cost proposal, the source of the recipient's contribution should be determined. Each of the cost elements contributed by the recipient and their amounts should be identified. If the contribution will consist at least in part of IR&D, the extent to which the IR&D may be recoverable from Government awards should be established. This will involve using the estimated Government participation rate of the recipient's General and Administrative indirect

cost base for the period of the cooperative agreement. An analysis consistent with 48 CFR (FAR) 15.404-1 and 15.404-2 should be performed.

(e) *Consortium.* If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(f) *Printing, binding, and duplicating.* Proposals for effort which involve printing, binding, and duplicating in excess of 25,000 pages are subject to the 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 grant officer will be advised in writing of the results of the ICPMO review.

\$ 1274.205 Award procedures.

(a) *General.* Multiple year cooperative agreements are encouraged, but normally they should not extend beyond two years.

(b) *Award above proposed amount.* Awards of cooperative agreements in response to competitive solicitations will not result in providing more NASA funds or resources than was anticipated in the recipient's proposal. If additional funds or resources are deemed necessary, they will be provided by the recipient and the Government cost share percentage will be adjusted downward.

(c) *Changes to cooperative agreements.* Cost growth or in-scope changes shall not increase the amount of NASA's contribution. Additional costs which arise during the performance of the cooperative agreement are the responsibility of the recipient. Funding for work required beyond the scope of the cooperative agreement must be sought through the submission of a proposal which will be treated as an unsolicited proposal.

(d) *Bilateral award.* All cooperative agreements awarded under this part will be awarded on a bilateral basis.

(e) *Certifications and representations.* (1) Unless prohibited by statute or codified regulation, recipients will be encouraged to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(2) Civil rights requirements—nondiscrimination in certain Federally-funded programs. Recipients must furnish assurances of compliance with

civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each cooperative agreement, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained from the grant officer. Upon acceptance, the grant officer will forward assurances to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(3) NASA cooperative agreements are subject to the provisions of 14 CFR Part 1265, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide requirements for Drug-Free Workplace (Grants), unless excepted by 1265.110 and 1265.610.

(4) A Lobbying Certification in accordance with 14 CFR part 1271 will be obtained prior to award.

(f) Indemnification under Public Law 85–804 is not authorized for cooperative agreements.

(g) *Notice of significant action.* The standard operating procedures for the Office of Public Affairs will be followed when notifying Congress and releasing information to the news media about awards. Grant/Contracting Officers must approve any exceptions to this policy.

§ 1274.206 Document format and numbering.

(a) Grant officers are authorized to use the format set forth in Exhibit B to subpart A of 14 CFR part 1260, with minimum modification, as the standard cooperative agreement cover page for the award of all cooperative agreements.

(b) Cooperative agreement numbering prior to Integrated Financial Management Project (IFMP) implementation shall conform to 48 CFR (NFS) 1804.7102–3, except that a NCC prefix will be used in lieu of the NAS prefix.

(c) There will be a phase-in term for Center implementation of the IFMP. For Centers using IFMP Performance Purchasing, the following cooperative agreement numbering system shall be used for new awards (awards made prior to conversion to IFMP will retain previously assigned numbers):

(1) Document Type for cooperative agreements. Cooperative agreements will use the prefix CO.

(2) Agency Identifier. The Agency identifier NAS shall follow the document number.

(3) Center Smart Codes. The Center identifier shall follow the document type:

Installation	Smart Code
Ames Research Center	A
Dryden Flight Research Center	D
Glen Research Center	C
Goddard Space Flight Center	G
Headquarters	H
Johnson Space Center	J
Kennedy Space Center	K
Langley Research Center	L
Marshall Space Flight Center	M
NASA Management Office-JPL	P
Stennis Space Center	S

(4) Fiscal Year. The fiscal year shall be represented as two digits.

(5) Procurement Code. Cooperative Agreements will be identified using “A” as the procurement code.

(6) Serial Numbers. Installations shall number cooperative agreements with commercial firms serially by fiscal year, within the same number series used for grants and cooperative agreements with non-profit organizations. The serial number shall be six digits commencing with “000001” and continuing in succession.

§ 1274.207 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 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 grant officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

Subpart C—Administration

§ 1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity. 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.* All novation agreements and change of

name agreements of the recipient, prior to execution, shall be reviewed by NASA legal counsel for legal sufficiency prior to approval.

Subpart D—Government Property

§ 1274.401 Government property.

The accomplishment of a cooperative agreement may require the purchase of equipment for a wide range of purposes. If this equipment is purchased with Government funds, i.e., as part of the Government contribution to the cooperative agreement, it becomes Government property and must be disposed of in accordance with 48 CFR (FAR) part 45 at the conclusion of the cooperative agreement. In some cases, this may meet the needs of the parties. If, however, the recipient may need the equipment to continue commercial efforts following the cooperative agreement, it should be purchased by the recipient and included as a non-cash contribution of the recipient. In this way, it is not procured, not even in part, with Government funds and the Government acquires no ownership interest. Procurement by the recipient may be before or during the performance of the cooperative agreement.

Subpart E—Procurement Standards

§ 1274.501 Subcontracts.

Recipients (individual firms or consortia) are not authorized to issue grants or cooperative agreements to subrecipients. All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable and may be subject to approval requirements cited in § 1274.925.

Subpart F—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This subpart sets forth requirements for record retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to NASA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart G—Suspension and Termination

§ 1274.701 Suspension or termination.

A cooperative agreement provides both NASA and the recipient the ability to terminate the agreement if it is in their best interests to do so. For example, NASA may terminate the agreement if the recipient is not making anticipated technical progress, if the recipient materially fails to comply with the terms of the agreement, if the recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program. Similarly, the recipient may terminate the agreement if, for example, technical progress is not being made, if the firms are shifting their technical emphasis, or if other technological advances have made the effort obsolete. NASA or the recipient may also suspend the cooperative agreement for a short period of time if an assessment needs to be made as to whether the agreement should be terminated.

Subpart H—After-the-Award Requirements

§ 1274.801 Purpose.

Sections 1274.802 and 1274.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1274.802 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the recipient.

(b) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with subpart D of this part.

§ 1274.803 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

- (a) Audit requirements in § 1274.932.
- (b) Property management requirements in subpart D of this part.
- (c) Records retention as required in § 1274.601.

Subpart I—Provisions and Special Conditions

§ 1274.901 Other provisions and special conditions.

The provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements. The provisions at §§ 1274.902 through 1274.909 and the provision at § 1274.933 are to be incorporated in full text substantially as stated in this subpart. The provisions at §§ 1274.910 through 1274.932 and § 1274.934 will be incorporated by reference in an enclosure to each cooperative agreement. For inclusion of provisions in subcontracts, see subpart E, Procurement Standards, of this Part.

§ 1274.902 Purpose.

Purpose

October 2000

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

October 2000

(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 with anticipated start and ending dates, as appropriate:

<i>Responsibility</i>	<i>Start</i>	<i>End</i>
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(c) Recipient Responsibilities. The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto.). The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

<i>Responsibility</i>	<i>Start</i>	<i>End</i>
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(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.
[End of provision]

§ 1274.904 Resource sharing requirements.

Resource Sharing Requirements

October 2000

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a ____ (NASA)– ____ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by Section 23, "Cost Sharing or Matching," of OMB Circular A–110. The "applicable federal cost principles" cited in OMB Circular A–110 shall be determined in accordance with 1274.919.

(b) The Recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to 48 CFR (NFS) 1831.205–18.
[End of provision]

§ 1274.905 Rights in data.

(As noted in § 1274.203(h)(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 grant 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 grant 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

October 2000

(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.

(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

October 2000

(a) For purposes of administration of the clause of this cooperative agreement entitled "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Grant Officer to administer such clause:

Title	Office Code	Address
New Technology Representative		
Patent Representative		

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" clause or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 48 CFR (NFS) 1827.305–70.

[End of provision]

§ 1274.907 Disputes.

Disputes

October 2000

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the _____ [Suggest this be the Center 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

October 2000

(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
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(c) Upon submission by the Recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the grant officer shall authorize payment.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent of the Grant Officer.

(e) The Recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) Unless approved by the Grant Officer, all preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) Invoices hereunder shall be submitted in the original and five copies to the Grant Officer for certification.

[End of provision]

§ 1274.909 Term of this agreement.

Term of This Agreement

October 2000

The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Provisions of this agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

[End of provision]

§ 1274.910 Authority.

Authority

October 2000

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 2000)

(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 (see 13 CFR 121.401 *et seq.*) of the Administrator of the Small Business Administration.

(8) "Subject Invention" means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) *Allocation of Principal Rights.*

(1) *Recipient Inventions.* For other than Small Business Firm or Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)" provision applies. For Small Business Firm and Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)" provision applies.

(2) *NASA Inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or

which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this 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 Executive Order 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), (3), or (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 Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government.

Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

[End of provision]

§ 1274.912 Patent rights—retention by the Recipient (large business).

Patent Rights—Retention by the Recipient (Large Business)

October 2000

(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 United States Code.

(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 (see 13 CFR 121.401 *et seq.*) of the Administrator of the Small Business Administration.

(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.*).

(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 Grant 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 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.*

(1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the

conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Grant 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 Grant 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 Grant Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Grant 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 Grant 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 Grant 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 Grant Officer learns of an unreported Recipient invention that the Grant 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 Grant 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 Grant 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 Grant Officer.

(3) The Recipient shall promptly notify the Grant 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 Grant 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 Contracting 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 2). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject

invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this 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)

October 2000

(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 Public Law 85-536 (15 U.S.C. 632) and implementing regulations (see 13 CFR 121.401 *et seq.*) of the Administrator of the Small Business Administration.

(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.

(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,

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 Grant Officer the following:

(i) A listing every 12 months (or such longer period as the Grant 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 Grant 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 Grant 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 Grant Officer.

(3) The Recipient shall promptly notify the Grant 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 Grant 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 (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 Contracting 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 2). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) *Reporting on utilization of subject inventions.* The Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this 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 Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time,

effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this 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) 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 Grant Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Recipient has applied for patents.

[End of provision]

§ 1274.914 Requests for waiver of rights—large business.

Requests for Waiver of Rights—Large Business

October 2000

(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 a 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 Grant 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 Grant 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 Grant Officer of the Administrator's determination. The Grant 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 Grant 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

October 2000

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers do not include—

(1) Sales of products or components;

(2) Licenses of software or documentation related to sales of products or components; or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Grant Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

[End of provision]

§ 1274.916 Liability and risk of loss.

Liability and Risk of Loss

October 2000

(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

October 2000

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

October 2000

(a) Of the award amount indicated on the cover page of this agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA anticipates making additional allotments of funds as required,

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.

[End of provision]

§ 1274.919 Cost principles and accounting standards.

Cost Principles and Accounting Standards

October 2000

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled "Resource Sharing Requirements") shall be governed by the FAR cost principles, 48 CFR part 31. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-

profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.") Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

[End of provision]

§ 1274.920 Responsibilities of the NASA Technical Officer.

Responsibilities of the NASA Technical Officer

October 2000

(a) The NASA Grant Administrator and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Grant Specialist shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the terms and conditions of this cooperative agreement.

[End of provision]

§ 1274.921 Publications and reports: Non-proprietary research results.

Publications and Reports: Non-Proprietary Research Results

October 2000

(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 micro-reproduction, shall be sent as follows:

- (1) Original—Grant 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.

(g) The requirements set forth under this provision may be modified by the Grant Officer based on specific report needs for the particular grant or cooperative agreement.

[End of provision]

§ 1274.922 Suspension or termination.

Suspension or Termination

October 2000

(a) This cooperative agreement may be suspended or terminated in whole or in part by the Recipient or by NASA after consultation with the other party. NASA may terminate the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program.

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to

additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.

[End of provision]

§ 1274.923 Equipment and other property.

Equipment and Other Property

October 2000

(a) NASA cooperative agreements permit acquisition of special purpose equipment required for the conduct of research.

Acquisition of special purpose equipment costing in excess of \$5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) Recipients may not purchase, as a direct cost to the cooperative agreement, items of general purpose equipment, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the Recipient requests an exception, the Recipient shall submit a written request for Grant Officer approval, prior to purchase by the Recipient, stating why the Recipient cannot charge the general purpose equipment to indirect costs.

(c) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.

(d) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR (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.

(e) 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.

(f) 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.

(g) 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 18 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 31. 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 31. A final report is required within 30 days after expiration of the agreement. [End of provision]

§ 1274.924 Civil rights.

Civil Rights

October 2000

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d-1), 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

October 2000

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Grant Officer consent is required for subcontracts over \$100,000, if not accepted by NASA in the original proposal. The Recipient shall provide the following information to the Grant Officer:

- (1) A copy of the proposed subcontract.
- (2) Basis for subcontractor selection.
- (3) Justification for lack of competition when competitive bids or offers are not obtained.
- (4) Basis for award cost or award price.

(c) The Recipient shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

[End of provision]

§ 1274.926 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts

October 2000

If this cooperative agreement or supplement thereto is in excess of \$100,000, the Recipient agrees to notify the Grant Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR part 15. 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 Pub. L. 91-604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Pub. L. 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 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

October 2000

NASA cooperative agreements are subject to the provisions of 14 CFR Part 1265, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.

[End of provision]

§ 1274.928 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements

October 2000

(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, Office of External Relations (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

October 2000

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

October 2000

(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

October 2000

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 Grant Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Recipient is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

(e) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay

payments of amounts otherwise properly due.

[End of provision]

§ 1274.932 Retention and examination of records.

Retention and Examination of Records

October 2000

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 non-expendable 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, the Comptroller General of the United States, the Office of Inspector General, 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

October 2000

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 Grant 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	Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(i)).
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.	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.	Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(2)).
Listing of Subject Inventions	Every 12 months from the date of the agreement.	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.	Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(3)).
Notification of a Subcontract Award	Promptly upon award of a subcontract	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	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).	Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(1)).
Summary of Research	90 days after completion of agreement	Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(2)).
NASA Form 1018 Property in the Custody of Contractors.	Annually by October 31	Equipment and Other Property (Paragraph (g)).
NASA Form 1018 Property in the Custody of Contractors.	60 days after expiration date of agreement.	Equipment and Other Property (Paragraph (g)).

[End of provision]

§ 1274.934 Safety.

Safety

October 2000

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this grant or 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 Grant Officer of any accident involving death, disabling injury or substantial loss of property in performing this grant or cooperative agreement. The Recipient will advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this grant or 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]

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 Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Chapter 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 (Executive Orders 12549 and 12689).* No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Exhibit B to Part 1274—Reports

1. *Individual procurement action report (NASA Form 507).* The grant officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

2. *Property reporting.* As provided in paragraph (g) 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.

3. *Disclosure of lobbying activities (SFLLL).* (a) Grant officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the procurement officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

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