

adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete a crop insurance acreage report, an insurance application and a continuous contract. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured may use actual records of production or receive a transitional yield which does not require the maintenance of production records. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured must report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local

officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This final rule amends the General Administrative Regulations (7 CFR part 400) as mandated by the Federal Agriculture Improvement and Reform Act of 1996. The 1996 Act removes the sodbuster/swampbuster restrictions of Title XII of the Food Security Act of 1985 (Pub. L. 99-198) which preclude eligibility for crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), to any person who in any crop year produces an agricultural commodity on highly erodible land or converted wetland. On or after the effective date of July 3, 1996, a person who produces an agricultural commodity on a field which is classified as predominantly highly erodible land or a converted wetland may apply for crop insurance if the sales closing date has not passed. Until the effective date, crop insurance policyholders must remain in compliance with the sodbuster/swampbuster provisions. Since these provisions are mandated by statute and planting decisions for the 1996 crop year have been or will shortly be made, it is impracticable and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the Federal Register and will be considered by FCIC before this rule is made final.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations, (7 CFR part 400), effective July 3, 1996, to read as follows:

PART 400—[AMENDED]

1. The authority citation for 7 CFR part 400, subpart F, continues to read as follows:

Authority: Secs. 1506, 1516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1501 *et seq.*); sec. 1244, Pub. L. 99-198.

§ 400.47 [Amended]

2. Section 400.47, *Denial of crop insurance*, is amended by removing paragraphs (b), (c), and (e) and redesignating paragraph (d) as paragraph (b), paragraph (f) as paragraph (c), and paragraph (g) as paragraph (d);

§ 400.48 [Amended]

3. Section 400.48, *Protection of interests of tenants landlords, or producers*, is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b);

§ 400.49 [Removed and Reserved]

4. Section 400.49, *Certification*, is removed and reserved; and

§ 400.50 [Removed and Reserved]

5. Section 400.50, *Graduated sanctions*, is removed and reserved.

Signed in Washington, DC, on July 16, 1996.

Suzette M. Ditttrick,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 96-18615 Filed 7-22-96; 8:45 am]

BILLING CODE 3410-FA-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700-AA95

Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, Uniform Administrative Requirements (OMB A-110 Implementation)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This rule revises NASA's grant regulations in order to adopt

uniform administrative requirements. Institutions that receive grants from more than one Federal agency may find it easier to follow the format of these uniform requirements.

DATES: This rule is effective August 22, 1996. All comments on this interim rule should be in writing and must be received by September 23, 1996.

ADDRESSES: Rich Kall, Code HK, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Rich Kall, (202) 358-0459.

SUPPLEMENTARY INFORMATION:

Background

This rule revises 14 CFR part 1260 to adopt the language of OMB Circular No. A-110 by using a format similar to the Department of Energy's regulation at 10 CFR part 600. A new subpart A provides the text of provisions and special conditions for grants and cooperative agreements and addresses NASA's authority, definitions, applicability, amendments, publications, deviations, pre-award requirements, and post-award requirements currently covered by 14 CFR part 1260. A new subpart B adopts the uniform administrative requirements of OMB Circular No. A-110 and includes NASA's choices in alternatives offered by A-110. Because A-110 was already published for public comment, NASA's adoption of the language is being done as an interim rule. NASA has added subpart C, Administrative Requirements for State and Local Governments (formerly in OMB Circular A-102 and currently in the agencies' Grants Management Common Rule), which has been codified at 14 CFR part 1273, FR 33694, 6-29-95.

Procedural Requirements

Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that display requirement by providing the following statement: information collection under

14 CFR part 1260 is not changed by this rule and was previously approved under OMB Control Numbers 2700-0047, 2700-0048, and 2700-0049.

Executive Order 12866

NASA has determined that this rule is significant under E.O. 12866. This regulation is needed because OMB Circular No. A-110 encourages agencies to adopt uniform administrative requirements for grants. The regulation meets that need by adopting the requirements of A-110. The potential costs and benefits of the regulatory action are that institutions that receive grants from more than one Federal agency may find it easier to follow the format of these uniform requirements. These requirements implement several Federal statutes applicable to grants, e.g., civil rights, clean air and water, and drug-free workplace.

List of Subjects in 14 CFR Part 1260

Grant programs.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR part 1260 is revised to read as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

- 1260.1 Authority.
- 1260.2 Definitions.
- 1260.3 Applicability.
- 1260.4 Amendment.
- 1260.5 Publication.
- 1260.6 Deviations.

Pre-Award Requirements

- 1260.10 Proposals.
- 1260.11 Evaluation and selection.
- 1260.12 Choice of award instrument.
- 1260.13 Award procedures.
- 1260.14 Limitations.
- 1260.15 Format and numbering.
- 1260.16 Distribution.

Provisions

- 1260.20 Provisions.
- 1260.21 Publications and reports.
- 1260.22 Extensions.
- 1260.23 Termination and enforcement.
- 1260.24 Change in principal investigator or scope.
- 1260.25 Allowable costs.
- 1260.26 Financial management.
- 1260.27 Equipment and other property.
- 1260.28 Patent rights.
- 1260.29 Rights in data.
- 1260.30 National security.
- 1260.31 Nondiscrimination.
- 1260.32 Subcontracts.
- 1260.33 Clean air and water.
- 1260.34 Procurement standards.
- 1260.35 Foreign national employee investigative requirements.
- 1260.36 Travel and transportation.

Special Conditions

- 1260.50 Special conditions.
- 1260.51 Cooperative agreement special condition.
- 1260.52 Multiple year grant.
- 1260.53 Incremental funding.
- 1260.54 Cost sharing.
- 1260.55 Reports substitution.
- 1260.56 Withholding.
- 1260.57 Training grant reports.
- 1260.58 Interest bearing accounts.
- 1260.59 Choice of law.
- 1260.60 Invention reporting and rights.
- 1260.61 Public information.
- 1260.62 Allocation of risk/liability.
- 1260.63 Payment—to foreign organizations.
- 1260.64 Customs clearance and visas.
- 1260.65 Taxes.
- 1260.66 Exchange of technical data and goods.

Post-Award Requirements

- 1260.70 Delegation of administration.
- 1260.71 Supplements and renewals.
- 1260.72 Adherence to original budget estimates.
- 1260.73 Transfers, novations, and change of name agreements.
- 1260.74 Property use, disposition, and vesting of title.
- 1260.75 Reports.
- 1260.76 Suspension or termination.
- 1260.77 Closeout procedures.

Appendix to Subpart A to Part 1260—Listing of Exhibits

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

General

Sec.

- 1260.101 Purpose.
- 1260.102 Definitions.
- 1260.103 Effect on other issuances.
- 1260.104 Deviations.
- 1260.105 Subawards.

Pre-Award Requirements

- 1260.110 Purpose.
- 1260.111 Pre-award policies.
- 1260.112 Forms for applying for Federal assistance.
- 1260.113 Debarment and suspension.
- 1260.114 Special award conditions.
- 1260.115 Metric system of measurement.
- 1260.116 Resource Conservation and Recovery Act (RCRA).
- 1260.117 Certifications and representations.

Post-Award Requirements

Financial and Program Management

- 1260.120 Purpose of financial and program management.
- 1260.121 Standards for financial management systems.
- 1260.122 Payment.
- 1260.123 Cost sharing or matching.
- 1260.124 Program income.
- 1260.125 Revision of budget and program plans.
- 1260.126 Non-Federal audits.
- 1260.127 Allowable costs.
- 1260.128 Period of availability of funds.

Property Standards

- 1260.130 Purpose of property standards.
- 1260.131 Insurance coverage.
- 1260.132 Real property.
- 1260.133 Federally-owned and exempt property.
- 1260.134 Equipment.
- 1260.135 Supplies and other expendable property.
- 1260.136 Intangible property.
- 1260.137 Property trust relationship.

Procurement Standards

- 1260.140 Purpose of procurement standards.
- 1260.141 Recipient responsibilities.
- 1260.142 Codes of conduct.
- 1260.143 Competition.
- 1260.144 Procurement procedures.
- 1260.145 Cost and price analysis.
- 1260.146 Procurement records.
- 1260.147 Contract administration.
- 1260.148 Contract provisions.

Reports and Records

- 1260.150 Purpose of reports and records.
- 1260.151 Monitoring and reporting program performance.
- 1260.152 Financial reporting.
- 1260.153 Retention and access requirements for records.

Termination and Enforcement

- 1260.160 Purpose of termination and enforcement.
- 1260.161 Termination.
- 1260.162 Enforcement.

After-the-Award Requirements

- 1260.170 Purpose.
- 1260.171 Closeout procedures.
- 1260.172 Subsequent adjustments and continuing responsibilities.
- 1260.173 Collection of amounts due.

Appendix A to Subpart B of Part 1260—Contract Provisions

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 Space Act. This part 1260 is issued under the authority of 42 U.S.C. 2473(c)(1).

(b) The Office of Management and Budget (OMB) approved information collection under the Paperwork Reduction Act through September 30, 1998 and assigned OMB control numbers 2700-0047, Property Management and Control; 2700-0048, Patents; and 2700-0049, Financial Management and Control. OMB control number 2700-0047 applies to grants subject to subparts A and B of this part.

§ 1260.2 Definitions.

Additional definitions can be found in § 1260.102.

Administrative grant officer. A Federal employee delegated responsibility for grant administration; e.g., under a delegation from a NASA grant officer.

Effective date. The date work can begin and the recipient can start spending grant funds. The effective date could be earlier or later than the date of signature on a basic award or modification.

Extension. A modification of an award, which would otherwise expire, to provide additional time, and if appropriate, additional funds for completion of project activities.

Grant specialist. A Government employee who is assigned the responsibility of negotiating and/or administering grants.

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

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

Multiple year grant. A grant for which NASA obligates funds for an initial period and states an intention to obligate funds for one or more additional periods. The initial period together with the unfunded periods exceeds one year (see § 1260.13(b)).

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

Performance Report. A concise statement of work accomplished during the report period (see § 1260.75(e)).

Provision. A term or condition applicable to grants awarded under this part 1260 (see § 1260.20).

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

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

Small disadvantaged business concern. A small business concern owned and controlled by individuals who are both socially and economically disadvantaged (within the meaning of § 8(a) (5) and (6) of the Small Business Act, as amended; 15 U.S.C. 637(a) (5) and (6); and 13 CFR 24).

Special condition. A term or condition that is not applicable to all grants or is temporary in nature (see § 1260.50).

Summary of Research. A document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed (see § 1260.75(f)(1)).

Supplement. The document NASA uses to effect changes and renewals to grants and cooperative agreements. They can be awarded unilaterally at the discretion of the grant officer.

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

§ 1260.3 Applicability.

Subparts A and B of this part 1260 establish policies and procedures for all grants and cooperative agreements awarded by NASA to educational institutions and other non-profit organizations.

§ 1260.4 Amendment.

This part 1260 will be amended by publication of changes in the Federal Register. Changes that require immediate dissemination may be issued as Grant Notices.

§ 1260.5 Publication.

(a) The NASA Grant and Cooperative Agreement Handbook is published as part 1260 of title 14 of the Code of Federal Regulations (CFR).

(b) Subscriptions to the NASA Grant and Cooperative Agreement Handbook may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, telephone number (202) 512-1800. Requests should cite GPO Subscription Stock No. 933-001-00000-8. A subscription consists of the basic edition, plus all changes issued for an indefinite period.

§ 1260.6 Deviations.

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

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

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

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

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

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

(b) Requests for authority to deviate from this part 1260 shall be submitted to the Office of Procurement, NASA Headquarters, Contract Management Division (Code HK). Requests, signed by the Procurement Officer, shall contain:

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

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

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

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

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

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

Pre-Award Requirements

§ 1260.10 Proposals.

(a) A grant can result from:

(1) *An NRA, AO, CAN or BAA.* A proposal submitted in response to a broad agency announcement (BAA) such as a NASA Research Announcement (NRA), Announcement of Opportunity (AO), Cooperative Agreement Notice (CAN), an agencywide program announcement such as the Graduate Student Research Program, or after approval by the Associate Administrator for Procurement or designee. NRA's and BAA's are described in the NASA FAR Supplement (NFGS) 48 CFR part 1835. AO's are described in 48 CFR part 1870, subpart 1870.1.

(2) *An unsolicited proposal.* Guidance on unsolicited proposals is contained in the Federal Acquisition Regulation (FAR) 48 CFR subpart 15.5 and NFS 48 CFR subpart 1815.5. The synopsis requirement in FAR 48 CFR 15.507(b)(4), however, does not apply to the grant process. Contact with NASA technical personnel prior to proposal submission is encouraged to determine

if preparation of a proposal is warranted. These discussions should be limited to understanding NASA research needs and do not jeopardize the unsolicited status of any subsequently submitted proposal.

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

(1) *Budget content.* All proposals shall include budget data as prescribed in the Budget Summary in Exhibit C of the appendix to this subpart A of this part 1260. Narrative detail must support the budgets as designated in Exhibit C to Appendix to this subpart.

(i) *Cost issues.* The recipient institution is responsible for ensuring that costs charged are allowable, allocable, and reasonable under the applicable cost principles governed by OMB Circular Nos. A-21 and A-122. For other details see §§ 1260.25 and 1260.127.

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

(iii) *Cost sharing.* NASA may accept cost sharing when voluntarily offered, and all awards including cost-sharing are subject to §§ 1260.13(c) and 1260.123. The amount of cost sharing will not be a factor in determining whether to select a proposal for award. However, recipients may be requested to secure nonfederal matching funds equal to the program portion to training and education grants.

(2) *Multiple year grants.* In accordance with NASA policy to foster continuity of research, multiple year grant proposals are encouraged, where appropriate, for a period generally up to three years. Continuing research programs will be subject to peer evaluation at least once every three years. Proposals for multiple year grants shall describe the entire research project and include a complete budget for year one and separate estimates for each subsequent year (see § 1260.13(b)).

(c) *Certifications and assurances* shall be made in accordance with § 1260.117, as follows.

(1) *Civil rights requirements.* Annually, recipients must furnish assurances on NASA Form 1206 of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252.

(2) *Debarment and suspension, drug-free workplace, and lobbying.* NASA grants are subject to the provisions of:

14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by § 1265.110 or § 1265.610; and 14 CFR part 1271 "New Restrictions on Lobbying." These certifications are required to be submitted with each proposal, including extensions. NASA does not require any particular form or format, but does require specific language.

§ 1260.11 Evaluation and selection.

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

(b) *Under NRA's, AO's, CAN's, and other BAA's.* The selecting official will furnish the grant officer a signed selection statement and a technical evaluation based on the evaluation criteria stated in the NRA, AO, CAN, or BAA. If a proposal is not selected, the proposer will be notified in accordance with the NRA, AO, CAN, or BAA.

(c) *Under unsolicited proposals.* (1) The evaluation of unsolicited proposals must consider:

(i) If the subject of the proposal is available to NASA from another source without restriction.

(ii) If the proposal closely resembles a pending competitive acquisition or a current, open BAA's under which the unsolicited proposal could be evaluated.

(iii) If the research proposed demonstrates an innovative and unique method, approach, or concept.

(iv) The proposals overall scientific or technical merit.

(v) The potential contribution to NASA's mission.

(vi) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(vii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(2) An unsolicited proposal recommended for acceptance shall be supported by a Justification for Acceptance of an Unsolicited Proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The grant officer's signature on the award document will indicate approval.

(3) NASA will promptly notify in writing each organization that submitted a proposal that will not be funded.

Proposals will be returned only when requested.

(d) *Equipment justification or travel justification.* These documents will be submitted by the technical office for grant officer approval when more than half of the proposed budget is for equipment or travel and associated indirect cost. The justification shall describe the extent to which the equipment or travel is necessary.

(3) *Proposal budget evaluation.* (1) The technical officer will review the budget for conformance to program requirements and fund availability, indicating the results of this review in Column B of the proposed budget.

(2) The grant officer will review the budget, and any changes made by the technical officer, to identify any item which may be unallowable under the cost principles, or which appear unreasonable or unnecessary. The grant officer will complete Column C of the proposed budget after discussing significant changes with the recipient. Any request for details should be limited.

(f) *Incremental funding.* NASA reserves the right to either fully fund or incrementally fund grants. Grants with anticipated annual funding exceeding \$50,000 may be funded for less than the amount stated in the proposal, provided:

(1) Two increments per grant year are authorized. The second increment will be the balance of funding for the year.

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

(g) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the Government Printing and Binding Regulations, No. 26, February 1990, S. Pub. 101-9, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800, published by the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO). The grant officer will be advised in writing of the results of the ICPMO review.

(h) *Rights in data.* Section 1260.29 is adequate only for grants for basic or applied research where the principal purpose (or only expected NASA involvement) is the publication or dissemination of the results, such as in journals or NASA publications (see § 1260.21).

(i) *Clean Air and Federal Water Pollution Control Acts.*

(1) By accepting a grant that contains § 1260.33, the recipient agrees that the

expenditure of grant funds is in compliance with the Acts.

(2) The Administrator may approve exemptions from this prohibition under certain circumstances under E.O. 11738. Requests for exemptions or renewals thereof shall be made to the Office of Procurement, NASA Headquarters, Contract Management Division (Code HK), Washington, DC 20546.

§ 1260.12 Choice of award instrument.

(a) This section and § 1260.111 provide guidance on the appropriate choice of award instruments consistent with 31 U.S.C. 6301 to 6308.

Throughout § 1260.12, the term "grant" does not include "cooperative agreements."

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

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

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

(c) A grant shall be used as the legal instrument to reflect a relationship between NASA and a recipient whenever the principal purpose is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. The following general characteristics meet the statutory criteria for use of a grant:

(1) Substantial involvement is not expected between NASA and the recipient when carrying out the activity.

(2) The exact course of the work and its outcome cannot be defined precisely and specific points in time for achievement of significant results cannot be realistically specified.

(3) Simplicity and economy in execution and administration are mutually desirable.

(4) Grants are distinguished from contracts in that grants provide financial or other tangible assistance to the recipient to carry on a fairly autonomous research program.

(d) The following defines various types of NASA grants:

(1) A research grant is used to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or

phenomena under study, or attempting to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art.

(i) The research requires long term support (i.e., in excess of one year) for the study to mature to maximum scientific effectiveness (this does not preclude shorter-term grants;

(ii) NASA desires, or the nature of the proposed investigation is such, that the recipient will bear prime responsibility for the conduct of research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the resources provided;

(iii) Meaningful technical reports (as distinguished from Performance Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

(2) An education grant is an agreement that provides funds to an educational institution or other nonprofit organizations within one or more of the following areas:

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

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

(iii) Supporting national educational reform movements;

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

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

(3) A training grant is an agreement that provides funds to an educational institution or other non-profit organization solely by providing scholarships, fellowships, or stipends to students, teachers, and/or faculty.

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

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

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

(iii) Students and faculty receiving direct support under a NASA training grant must be U.S. citizens.

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

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

(vi) Unused funds may be carried over into the following program year without further NASA approval. This carry-over amount need not be shown in the budget for the next program year.

(vii) The use of training grant funds to acquire equipment, passenger carrying vehicles, land (or any interest therein), or to acquire or construct facilities will not be permitted. Government furnished equipment will not be provided.

(viii) All foreign travel must be clearly essential to the research effort and must, to be charged to a grant, have the prior written approval of the NASA technical officer and the grant officer for each trip, regardless of its inclusion in the proposal budget.

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

(4) A facilities grant can be issued by NASA under the authority of the Space Act, 42 U.S.C. 2473(c)(5). It is used to provide for the acquisition, construction, use, maintenance, and disposition of facilities. Facilities, as used in this subpart, means property used for production, maintenance, research, development, or testing.

(i) Prior approval by the Associate Administrator of Procurement and a review by legal counsel to assure legal sufficiency are required. It is unlikely an award will be made unless Congressionally mandated.

(ii) To obtain approval, prior to proceeding with the award a package will be forwarded to the Director, Contract Management Division (HK), that includes pertinent background information, detailed rationale for the request, dollar value, and name of the recipient.

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

(1) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This could involve an active NASA role in collaborative relations, access to a NASA site or equipment, or sharing NASA facilities and personnel;

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

(3) The nature of the collaboration can be clearly defined and specified in advance (special provision § 1260.51 shall be used). Cooperative agreements would be appropriate, for instance, where a university investigator works for a substantial amount of time at a NASA Center (or a NASA investigator works at a university), or when the collaboration is such that a jointly authored report or education curriculum product is appropriate.

(f) Grants and cooperative agreements with foreign organizations are awarded under the authority of the Space Act, 42 U.S.C. 2473(c)(5).

(1) Before initiating action, the grant officer shall coordinate with the Headquarters Office of External Relations, International Relations Division (Code IR). Grants to other than foreign government institutions require a review by the Office of General Counsel.

(2) It is NASA policy that, in general, research will be accomplished on a no-exchange-of-funds basis with foreign entities. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

§ 1260.13 Award procedures.

(a) *Multiple year grant.* NASA policy is to make maximum use of multiple year grants to support research projects that may span several years.

(1) At the time a research proposal is recommended for award, a decision will be made whether to award a multiple year grant. Special condition § 1260.52, Multiple Year Grant, would be included at award.

(i) For the periods approved in § 1260.52, neither a new proposal nor another technical evaluation is required unless a special need for review is indicated through monitoring the project and its reports, by the introduction of work outside the scope of the approved proposal, or by the need for substantial unanticipated funding.

(ii) A funded extension beyond the period listed in § 1260.52 may be made by using the provision § 1269.22, Extensions. This requires the submission of a new proposal, subject to full review as discussed in §§ 1260.11 and 1260.71(b), plus consideration of the timely submission of reports as required in § 1260.21.

(2) Normally, each year of a multiple year grant will be funded at the approximate level in the original award instrument. However, NASA program constraints and developments within the project may dictate adjustment in the originally anticipated level. When the actual differs from the planned funding, the technical officer shall mark up Column B of the budget summary and send it to the grant officer with an explanation. The recipient may rebudget under the grant provisions to keep the project within the funding actually provided.

(b) *Annual grant.* Grants may be awarded for a short term (e.g., on an annual basis) and may be extended, if appropriate, as described in § 1260.71. Extensions should be executed prior to the grant expiration date.

(c) *Cost sharing.* NASA grant recipients usually gain no measurable benefit from grants, other than conducting the research. Cost sharing based on mutuality of interest applies to NASA grants where the grant officer has reason to believe that the recipient will benefit from the research results through sales to non-Federal entities (see § 1260.123). When cost sharing is used, the grant officer shall use a Special Condition substantially as shown in § 1260.54.

(d) *Partial support.* NASA may provide partial support for a research project or conference where additional funding may be provided by other Federal agencies. If the grant also involves cost sharing by the recipient,

the grant officer will ensure that § 1260.54 applies only to the non-Federal funding.

§ 1260.14 Limitations.

(a) As a matter of policy, NASA does not award grants to commercial firms. However, Cooperative Agreements may be awarded to commercial firms in accordance with § 1260.300.

(b) NASA does not award grants for donative assistance purposes, but only to meet program objectives. Research in any academic discipline related to NASA interests normally will qualify. However, advice of legal counsel should be sought in unusual situations, or when unusual project activities or organizational attributes are evident.

(c) It is NASA's policy that non-monetary (zero dollar) grants or cooperative agreements shall not be used (except for no-cost extensions). Loans of Government personal property not associated with a contract, grant, or cooperative agreement under 31 U.S.C. 6301 to 6308, and made under the Space Act of 1958, should be consummated as loan agreements.

(d) Grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements (see 48 CFR subpart 37.2 (FAR) and 48 CFR subpart 18237.2 (NFS)).

§ 1260.15 Format and numbering.

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

(b) *Formats.* Those shown in Exhibit B of the appendix to this subpart A shall be used for the award of all NASA grants and cooperative agreements. Computer-generated versions are allowed. Provisions for grants with U.S. organizations shall be incorporated by reference, and preprinted checklists may be used. Special conditions and provisions for grants with foreign organizations will be printed in full text. An acceptance block may be added when the grant officer finds it necessary to require bilateral execution of the grant. When attaching detailed budgets, salaries will not be revealed.

(c) *The identification numbering system.* (1) For research, education, and facilities grants, numbering shall conform to NFS 48 CFR 1804.7102-3, except that a NAG prefix will be used in lieu of the NAS prefix. The prefix designation will include the Center Identification Number; e.g., NAG5 would be the Goddard prefix designation. They will be sequentially numbered.

(2) Cooperative agreements will use the prefix NCC plus the Center

Identification Number. They will be sequentially numbered.

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

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

§ 1260.16 Distribution.

Copies of grants and supplements will be provided to: payment offices (original copy); technical officers; administrative grant officers when delegated; the NASA Center for AeroSpace Information (CASI), Attn: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090-2934; and other appropriate offices. The statement of work accepted by NASA and a copy of the approved budget will be provided to the administrative grant officers. CASI will also receive the statement of work. The file will record the addresses for distribution.

Provisions

§ 1260.20 Provisions.

(a) The provisions set forth in § 1260.21 through 1260.37 shall be incorporated by reference and made a part of NASA research grants, education grants, and cooperative agreements with U.S. educational institutions and nonprofit organizations.

(b) In training grants, the provisions of the following section will be incorporated: §§ 1260.22, 1260.23, 1260.25, 1260.26, 126.28, 1260.29, 1260.31, and 1269.35.

(c) In facilities grants, provisions will be selected on a case-by-case basis.

(d) In research grants awarded to foreign organizations, the provisions of the following sections, modified as necessary, will be in full text: §§ 1260.21, 1260.22, 1260.23, 120.24, 1260.26, 1260.27, 1260.32, and 1260.36. References will not be used to handbooks, statutes, or other regulations which the recipient may neither have access to or can realistically be expected to comply.

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

(f) Section 1260.148 and Appendix A to subpart B to part 1260 address provisions to be used in contracts awarded by recipients.

§ 1260.21 Publications and reports.

Publications and Reports (July 1996)

(a) NASA encourages the widest practicable dissemination of research results

at any time during the course of the investigation. All information disseminated as a result of the grant shall contain a statement which acknowledges NASA's support and identifies the grant by number (e.g., "The material is based upon work supported by NASA under award No(s) _____").

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

(1) A Performance Report for all but the final year of the grant. Each report is due 60 days before the anniversary date of the grant and shall briefly describe what was accomplished during the reporting period as outlined in § 1260.151(d). A special provision specifying more frequent reporting may be required.

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

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

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

(6) Grant number.

(e) Performance Reports, Summaries of Research, and Education Activity Reports shall be distributed as follows:

(1) The Original to the administration grant officer, with a notice to the grant officer that a report was sent.

(2) One copy, in both hard copy and electronic format, to the technical officer.

(f) For Summaries of Research and published reports, one Micro-reproducible copy shall be sent to the NASA Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090-2934.

§ 1260.22 Extensions.

Extensions (July 1996)

(a) It is NASA policy to provide maximum possible continuity in funding grant—supported research and educational activities, therefore, grants may be extended for additional periods of time. Any extension requiring additional funding should be supported by a proposal submitted at least three months in advance of the expiration date of the grant.

(b) Recipients may extend the expiration date of a grant if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, in accordance with § 1260.125(e)(2), the recipient may unilaterally make a one-time no-cost

extension, not to exceed 12 months, prior to the established expiration date. Written notification of such an extension, with the supporting reasons, must be received by the grant officer at least ten days prior to the expiration of the award.

(c) Requests for approval for all other extensions (in excess of 30 days) must be submitted in writing to the grant officer.

§ 1260.23 Termination and Enforcement.

Termination and Enforcement (July 1996)

Termination and enforcement conditions of this award are specified in §§ 1260.160 through 1260.162. If NASA determines that the recipient has materially failed to comply with the terms and conditions of the grant, NASA may suspend or terminate the grant in whole or in part after consultation with the recipient. However, NASA may immediately suspend or terminate the award without prior notice when it believes such action is necessary to protect the interest of the Government.

§ 1260.24 Change in principal investigator or scope.

Change in Principal Investigator or Scope (July 1996)

The recipient organization and the principal investigator are responsible for the effective conduct of the project or activity supported by this award.

(a) The recipient shall obtain the approval of the NASA grant officer to change the principal investigator or to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument could be grounds for termination, unless alternatives arrangements are made and approved in writing by the grant officer.

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

§ 1260.25 Allowable costs.

Allowable Costs (July 1996)

(a) The recipient institution is responsible for ensuring that costs charged to this award are allowable, allocable, and reasonable under the applicable cost principles defined in § 1260.127. Sections 1260.24, 1260.27, 1260.32, and requests for additional funding require prior approvals.

(b) Payments to individuals for consultant services under a NASA grant shall not exceed the daily equivalent of the maximum rate paid for Level IV of the Executive Schedule, exclusive of expenses and indirect cost.

(c) Recipients may incur pre-award costs 90 calendar days prior to award, provided the costs are necessary for the effective and economical conduct of the project and are otherwise allowable under the terms of the grant. All preaward costs are incurred at the recipient's risk. NASA is under no obligation to reimburse such costs if an award is not subsequently made, or if an award is made for a lesser amount than the recipient anticipated and is insufficient to cover the pre-award costs.

(d) Comptroller General decisions govern allowability of costs for international air transportation (see § 1260.37).

§ 1260.26 Financial management.

Financial Management (July 1996)

(a) *Payment.* Advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Center which issued the grant in accordance with procedures provided to the recipient. The recipient shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and, if NASA has delegated administration, to the administrative grant officer, within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported. The final SF 272 is due within 90 days after the expiration date of the grant.

(b) *Management and records.* Financial and program management requirements of §§ 1260.120 through 1260.128 apply to all recipients. Financial records, supporting documents, statistical records, and all other records pertinent to this award shall be retained in accordance with § 1260.153. Provisions of § 1260.26(c) shall apply to subcontractors performing substantive work under this grant.

(c) *Unexpended balances.* Any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. The estimated amount of unexpended funds shall be identified in the grant budget section of the recipient's renewal proposal.

(d) *Program income* will be subject to § 1260.124.

(e) Provisions of § 1260.26(c) shall apply to subcontractors performing substantive work under this grant.

§ 1260.27 Equipment and other property.

Equipment and Other Property (July 1996)

(a) NASA permits acquisition of special purpose equipment (as defined in OMB Circulars A-21 and A-122) specifically required and only used for research, medical, scientific or other technical activities.

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

(2) Title to special purpose equipment acquired by the recipient with grant funds, valued under \$5,000 in acquisition cost, shall vest in the recipient and will be considered "exempt" in accordance with § 1260.133(b).

(3) NASA may elect to take title to items of special purpose equipment valued at more than \$5,000 (acquisition cost each) or when fabricated into a single coherent system (aggregate acquisition cost). The recipient will be advised of the Government's intention to take title in writing if the item

is approved for recipient purchase. If the Government does not exercise its right to take title to property acquired by the recipient with grant funds at the time of approval, the property will be considered exempt according to § 1260.133(b). The recipient shall hold title without further obligation to the Federal Government.

(b) General purpose equipment items require the prior approval of the Grant Officer to be a direct charge, shall be titled to NASA, managed in accordance with § 1260.134(f), and reported in accordance with § 1260.27(e).

(c) Grant funds may be expended for the acquisition of land or interests therein or for the acquisition and construction of facilities *only* under a facilities grant, as defined in § 1260.12(g).

(d) The recipient shall maintain a property management system which meets the requirements of §§ 1260.130 through 1260.137. The cognizant property administration officer or property administrator shall be notified of any major change to an approved system.

(e) The recipient shall submit an Inventory Report, to be received no later than October 31 of each year, which lists all Federally owned property in its custody as of September 30. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the recipient no later than 60 days after the expiration date of the grant.

(1) All reports will include the information listed in paragraph (f)(1) of § 1260.134, Equipment.

(2) Negative responses in the Final Inventory Report, when there is no reportable equipment, are required.

(3) The original of each report shall be submitted to the Center Deputy Chief Financial Officer (Finance). Copies shall be furnished to the Center industrial property officer and to ONR.

§ 1260.28 Patent rights.

Patent Rights (July 1996)

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

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

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

(c) The NASA regulation applicable to paragraph (e) of the "Patent Rights" clause is at 37 CFR Part 404, Licensing of Government-owned Inventions.

(d) The following item is added to the end of paragraph (f) of the "Patent Rights" clause:

(5) The recipient shall include a list of all Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal, and a complete list (or a negative statement)

for the entire award period shall be included in the summary of research.

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

(f) The NASA implementing regulation for paragraph (g)(2) of the "Patent Rights" clause is at 48 CFR 1827.373(b).

(g) The following requirement constitutes paragraph (1) of the "Patent Rights" clause:

(1) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the administrative grant officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the administrative grant officer, the recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the recipient has applied for patents.

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

i. In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

§ 1260.29 Rights in data.

Rights in Data (July 1996)

(a) *Fully Funded Efforts*.

(1) "Data" means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant.

(2) The recipient grants to the Federal Government, a royalty-free, nonexclusive and

irrevocable license to use, reproduce, distribute (including distribution by transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner for Federal purposes and to have or permit others to do so for Federal purposes only. Federal purposes include competitive procurement but do not include the right to have or permit others to use data for commercial purposes.

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

(4) If information which recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into data as defined herein), identified and marked with a suitable notice or legend and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(b) *Cost Sharing and/or Matching Efforts*. When the recipient cost shares with the Government on the effort, the following is added:

(5) In the event data first produced by recipient in carrying out recipient's responsibilities under an agreement is furnished to NASA, and recipient considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in § 1260.29(a)(2).

c. *Add the following paragraph in Cooperative Agreements*. (#) As to data first produced by NASA in carrying out NASA's responsibilities under a cooperative agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it has been obtained from the recipient, such data will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ____ years (*insert a period of up to 5 years.*) after development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such data to

any third party without NASA's written approval until the aforementioned restricted period expires.

§ 1260.30 National security.

National Security (July 1996)

Normally, NASA grants do not involve classified information. However, if information is sought or developed by the recipient that should be classified in the interests of national security, the NASA grant officer who issued the grant shall be notified immediately.

§ 1260.31 Nondiscrimination.

Nondiscrimination (July 1996)

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

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

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

§ 1260.32 Subcontracts.

Subcontracts (July 1996)

(a) For all subcontracts over \$25,000 awarded by the recipient, the recipient shall provide the following to the NASA grant office for approval.

(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) The subcontract budget and basis for subcontract cost or price.

(b) The recipient (with the exception of foreign organizations) shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

(c) All contracts awarded by a recipient, including small purchases, shall contain the provisions found in appendix A to subpart B of part 1260, as applicable.

§ 1260.33 Clean Air and Water.

Clean Air and Water (July 1996)

(Applicable only if the award exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)), and 9s listed by EPA, or if the award is not otherwise exempt).

The recipient agrees to he following:

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

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

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

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

(e) Report violations to NASA or to EPA.

§ 1260.34 Procurement standards.

Procurement Standards (July 1996)

a. The recipient shall maintain a procurement system which, at a minimum, meets the requirements set forth in §§ 1260.140 through 1260.148.

b. Procurement programs funded with Federal funds shall give preference to he purchase of recycled products pursuant to EOA guidelines.

§ 1260.35 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements (July 1966)

(a) The recipient agrees to provide the information requested by NASA to allow the recipient's access to a NASA Center for performance of this grant. All visit requests must be submitted in a timely manner in accordance with instructions provided by the Center(s) to be visited.

(b) The recipient acknowledges that NASA reserves the right to perform security checks on foreign national visitors, and to deny or restrict access to a NASA Center, facility, computer system, or technical information in the interest of national security.

§ 1260.36 Travel and transportation.

Travel and Transportation (July 1996)

(a) The Fly America Act, 49 U.S.C. 40118, requires the recipient to use U.S. flag air carriers for international air transportation of personnel and property to he extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern recipient shipment of hazardous materials and other items.

Special Conditions**§ 1260.50 Special conditions.**

(a) In addition to the provisions set forth in §§ 1260.21 through 1260.37, NASA grants are subject to special conditions, which either are not applicable to all awards or are temporary in nature. Examples are found in §§ 1260.51 through 1260.66, but NASA may impose other conditions as discussed in § 1260.114 or as the requirements dictate. A deviation to this handbook is not required for changes to special conditions.

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

(c) For training grants, use § 1260.57 plus any other special conditions necessary.

(d) In facilities grants, special conditions will be selected on a case-by-case basis. As appropriate, the requirements of the following sections will apply: §§ 1260.132, Real property; 1260.123(c), Cost sharing or matching; and 1260.125(h), Revision of budget and program plans.

(e) Research grants with foreign organizations will include special conditions §§ 1260.58 through 1260.62, modified as necessary, when not covered under a Memorandum of Agreement (MOA). In addition, other clauses (e.g., §§ 1260.63 through 1260.66) will be written with the aid of General Counsel, and added when necessary.

§ 1260.51 Cooperative agreement special condition.

Cooperative Agreement Special Condition (July 1996)

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

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

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

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

§ 1260.52 Multiple year grant.

Multiple Year Grant (July 1996)

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

Second year \$_____, Anticipated funding date _____.

Third year \$_____, Anticipated funding date _____.

(Periods may be added or omitted, as applicable).

§ 1260.53 Incremental funding.

Incremental Funding (July 1996)

Only \$_____ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making an additional allotment in the amount of \$_____ by _____. These funds will be obligated as appropriated funds become available without any action required by the recipient. The recipient will be given written notification by the NASA grant officer. NASA is not obligated to reimburse the recipient for the expenditure of amounts in excess of the total funds allotted by NASA.

§ 1260.54 Cost sharing.

Cost Sharing (July 1996)

(a) NASA and the recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the recipient's cash and/or non-cash contribution will be on a _____ percent NASA; _____ percent recipient basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by § 1260.123, Cost Sharing or Matching. The applicable Federal cost principles are cited in § 1260.127.

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

§ 1260.55 Reports substitution.

Reports Substitution (July 1996)

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

§ 1260.56 Withholding.

Withhold (July 1996)

Pending receipt of a satisfactory completed Summary of Research and/or other reports required under NASA grant No. _____, the Financial Management Office will withhold all payments under this grant (including advance payments). The grant officer will notify the NASA Financial Management Office when payments can resume.

§ 1260.57 Training grant reports.

Training Grant Reports (July 1996)

No later than 60 days after the ending date of the grant, the recipient will provide the NASA Headquarters Office of Human Resources and Education an *Administrative Report* that details the fellow's research and academic progress. Pertinent information relating to the student, including the degree granted and employment plans, are to be included. Students are required to submit a

Student Evaluation Form to the administrative contact at the Center monitoring the work 90 days prior to the ending date of the fellowship.

§ 1260.58 Interest bearing accounts.

Interest Bearing Accounts (July 1996)

Advances of federal funds shall be maintained in interest-bearing accounts. Interest earned on federal advances deposited in such accounts shall be remitted to DHHS at least quarterly, as instructed by the Financial Management Office of the NASA Center which issued the grant. Interest amounts up to \$250 per year may be retained by the recipient.

§ 1260.59 Choice of law.

Choice of Law (July 1996)

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

§ 1260.60 Invention reporting and rights.

Invention Reporting and Rights (July 1996)

(a) As used in this provision:

(1) The term "invention" means any invention, discovery or improvement:

(2) The term "made" means the conception or first actual demonstration that the invention is useful and operable.

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

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

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

(c) The recipient hereby grants to the Government of the United States of 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 except

§ 1260.61 Public information.

Public Information (July 1996)

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

§ 1260.62 Allocation of risk/liability.

Allocation of Risk/Liability (July 1996)

a. With respect to activities undertaken under this agreement, the recipient agrees not to make any claim against NASA or the U.S. Government with respect to the injury or death of its employees or its contractors and

subcontractor employees, or to the loss of its property or that of its contractors and subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

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

§ 1260.63 Payment—to foreign organizations.

Payment—To Foreign Organizations

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

§ 1260.64 Customs clearance and visas.

Customs Clearance and Visas

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

§ 1260.65 Taxes.

Taxes

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

§ 1260.66 Exchange of technical data and goods.

Exchange of Technical Data and Goods

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

Post-Award Requirements

§ 1260.70 Delegation of administration.

(a) Pursuant to the Government-wide "cross-servicing" policy, NASA grants and cooperative agreements shall be delegated for full administration (including property and closeout) to the Office of Naval Research (ONR). Exceptions to this policy must be approved by the Procurement Officer, documented, and made part of the file.

(b) Delegations will be made by using NASA Form NF 1671. The grant officer will strike out any parts of the form that do not apply and write in specific instructions regarding actions requiring ONR involvement. The grant officer will inform the recipient, in writing, that a delegation has been made.

(c) ONR will acknowledge this delegation by returning a NF 1431 to the grant officer within five days of receipt.

§ 1260.71 Supplements and renewals.

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

Withholding (§ 1260.56), and Novations (§ 1260.74). Renewal of grant (§ 1260.22) is a unilateral decision by NASA based upon availability of funds, continued research relevance, and progress made by the recipient.

(b) To eliminate the paperwork burdens associated with closeout and negotiations for a new grant, ongoing efforts to continue the same effort at the same institution will be accomplished by modifying the current instrument, unless there is a significant change in the nature of the work or closure would be in the best interest of the Government.

(1) Grants should be renewed prior to their expiration date. When possible, the period of performance should be continuous with the prior grant. If otherwise acceptable, NASA may fund an extension through a multiple year grant (§ 1260.13(a)) or by extending the existing grant. Such extensions (other than no-cost extensions) must be supported by a new proposal from the recipient.

(2) To insure continuation, the technical office should forward to the grant office a complete technical evaluation, support documentation, and/or a funded Procurement Request at least 45 days before the expiration of the funded period.

Although the grant officer has little control over the timely receipt of purchase requests, he/she is responsible for informing the technical officer of current lead-time requirements and for timely processing continuation agreements.

(3) The technical office will notify the recipient if the grant is to be funded or if additional information is required. Alternatively, if a grant is not to be renewed, the program office should give the grant officer and the recipient 30-day notice.

(c) Requests by the recipient to modify a grant must be in writing to the grant officer. Examples might include changes in principal investigator or additional funding. After concurrence by the program manager, a grant supplement will be unilaterally issued at the discretion of the grant officer.

(d) A single no-cost extension for up to 12 months can be unilaterally issued by the recipient as detailed in paragraph (b) of the provision § 1260.22, Extensions.

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

§ 1260.72 Adherence to original budget estimates.

(a) Although NASA assumes no responsibility for budget overruns, the recipient may spend grant funds without strict adherence to individual allocations within the proposed budgets, except as provided in §§ 1260.27 and 1260.32.

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

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

(a) *Transfer of grants.* Novation as provided in § 1260.73(b), is the only means by which a grant may be transferred from one institution to another. When the principal investigator changes organizational affiliation and desires support for the research at a new location and novation is not used, a new proposal must be submitted to NASA via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the recipient, prior to execution, shall be reviewed by legal counsel for legal sufficiency. When a change in principal investigator from one institution to another occurs, novation of the grant is preferable to termination.

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

(a) Administrative grant officers shall not approve the expenditure of grant funds for the acquisition of general purpose equipment as defined by OMB Circulars A-21 and A-122 unless the recipient's justification for the equipment demonstrates that the equipment will be used exclusively for research.

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

(c) Administrative grant officers will provide copies of property related grant documentation to the Center industrial property officer (prior to award or modification) when the program office elects to retain title to an existing item of Government property, to furnish the property to the recipient in lieu of donation or to take title to property acquired by the recipient. When NASA

acquires title to items of recipient acquired equipment or when NASA transfers an item of Government property to a recipient as Federally owned property, the administrative grant officer shall notify both the cognizant NASA Center financial management officer and the equipment management officer to ensure proper entries in financial and property accounting records.

(d) NASA policy encourages titling as "exempt" all property acquired by a nonprofit organization whose primary purpose is the conduct of scientific research, without further obligation to the Federal Government. Unless NASA takes title, equipment purchased with grant funds vests in the recipient subject to § 1260.134.

(1) If NASA elects to take title to recipient acquired property, said decision will be subject to § 1260.132(b)(3).

(2) Title to individual items or coherent systems (as defined in § 1260.74(f)) of recipient acquired equipment purchased at a cost of more than \$5,000 may revert back to NASA at NASA's discretion, subject to the following conditions.

(i) NASA shall notify the recipient in writing as part of the approval for retaining the item. If the item was requested as part of the original budget, the award must specify NASA's intention to take title.

(ii) Government titled property will be subject to the provisions for other Federally owned property as stated in § 1260.133.

(3) Title to equipment costing \$5,000 or less is not subject to transfer to the agency, except under the conditions of § 1260.74(f).

(e) Title to Federally-owned property remains with the Government.

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

(2) When Federally-owned property is reported excess by a recipient, the administrative grant officer will report the equipment to the Center property disposal officer.

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

(f) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities, and their separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes recipient-owned

components, the property will be considered to be exempt. The requirement for agreement regarding NASA's retention of its option to take title shall further apply where it is expected that one or more recipient-acquired components costing \$5,000 or less will be fabricated into a single coherent system costing in excess of \$5,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

§ 1260.75 Reports.

(a) The grant officer is responsible for submitting the Individual Procurement Action Report (NASA Form 507) for all grant actions.

(b) The Committee on Academic Science and Engineering (CASE) Report (NASA Form 1356), for research grants awarded to educational institutions, is submitted with the basic award procurement request. In the case of certain non-funded actions for educational institutions, the NF 1356 is initiated by the grant officer.

(c) The Federal Cash Transactions Report (SF 272) shall be submitted by the recipient within 15 working days following the end of each Federal fiscal quarter, as a condition of receiving advance payments. Instructions and answers to payment questions will be provided by the Financial Management Office of the Center that issued the grant. (see § 1260.152.)

(d) The annual Inventory Report of Federally Owned Property in Custody of the Recipient will be submitted by the recipient by October 31, as required by § 1260.27(e). The listing shall include information specified in § 1260.134(f) together with beginning and ending dollar value totals for the reporting period.

(e) A Performance Report shall be submitted in accordance with §§ 1260.21 and 1260.151(d). Recipients shall not be required to submit more than the original and two copies of performance reports (§ 1260.151(e)). At the request of the technical officer, this requirement may be modified by use of special condition § 1260.55 entitled "Reports Substitution".

(f) Final reports are as follows.

(1) A Summary of Research for research grants, an Education Activity Report for education grants, or an Administrative Report for training grants, shall be submitted as required by § 1260.21 or § 1260.57. Citation of publications resulting from research, or abstracts thereof, may serve as all or part of the summary. A separate report is required if inventions and patents

resulted from the work. In addition, students are required to submit a Student Evaluation Form to the administrative contact at the Center monitoring the work 90 days prior to the ending date of a fellowship.

(2) A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, shall be submitted by the recipient no later than 60 days after the end of the grant, as required by § 1260.27.

(3) A properly certified Final Federal Cash Transactions Report, SF 272, is required from the recipient for each grant, as addressed in § 1260.26(a).

(g) One copy of each Disclosure of Lobbying Activities (SF LLL), under 14 CFR 1271.110, shall be provided by the grant officer to the Procurement Officer for transmittal to the Director, Contract Management Division (Code HK). Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to Code HK.

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

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

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

(2) Consistent with §§ 1260.122(h) and 1260.162(a), NASA does not withhold payment until a recipient has failed to comply with report requirements for more than 90 days. To remedy failure to furnish reports, special condition § 1260.56, Withholding, should be used when awarding a new grant or modifying an existing grant with non-responsive organizations.

(i) Special condition § 1260.56 instructs the Financial Management Office to withhold payment pending receipt of the satisfactorily completed reports required in § 1260.75.

(ii) The grant officer may waive the withholding requirement when the recipient has taken corrective action

that makes withholding unnecessary. To release for payment the amount withheld, grant officers shall send a memorandum to their Financial Management Office.

§ 1260.76 Suspension or termination.

Suspension 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 §§ 1260.23 and 1260.160). Before suspending or terminating any grant with a university, the NASA grant officer and technical officer shall take into account the consequences to graduate students working under the grant.

§ 1260.77 Closeout procedures.

The closeout of a grant is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by both the recipient and NASA and no further action is necessary (see § 1260.171).

(a) *Initiation.* The NASA grant officer shall determine from the technical officer that work under a particular grant will not be continued or is completed. The NASA grant officer will promptly notify ONR to begin closeout within 90 days of this determination. ONR will inform the recipient of pending closeout and the final documentation required, to the extent practicable, prior to the grant's expiration date.

(1) To expedite closeout, NASA grant officers shall respond to ONR inquiries within 30 days. The use of E-mail communication between ONR and NASA is encouraged.

(2) Recipients shall not be requested to complete forms or supply information other than discussed in § 1260.75(c) through (f), except in unusual situations.

(b) *Reports submission.* ONR will ensure that all reports required from the recipient (see § 1260.75) have been received by the appropriate NASA offices.

(c) *Reports certification.* ONR will obtain from those that receive NASA reports, written certification that the reports have been satisfactorily completed. The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see § 1260.135). In reviewing the certifications, see §§ 1260.171 and 1260.172.

(d) *Administratively complete.* A grant is administratively complete when

(1) All reports have been received;

(2) All certifications have been received;

(3) Payments have been made for allowable reimbursable costs and refunds have been received for any balance of unobligated cash advanced that is not authorized to be retained for use on other grants; and

(4) A DD Form 1594 has been provided by ONR to the NASA grant officer.

(e) *Retention of documents.* Records will be retained in accordance with § 1260.153.

Appendix to Subpart A to Part 1260—Listing of Exhibits

Exhibit A—Delegation of Administration

Exhibit B—Formats

Example 1—Research Grant

Example 2—Cooperative Agreement

Example 3—Training Grant

Example 4—Education Grant

Example 5—Grant or Cooperative Agreement with Foreign Organizations

Exhibit C—Budget Summary

Note: Exhibits are available at NASA Headquarters, Code HK, Washington, DC 20546.

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

General

§ 1260.101 Purpose.

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

§ 1260.102 Definitions.

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

(1) Goods and other tangible property received;

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

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

(b) *Accrued income* means the sum of:

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

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

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

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

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

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

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

(h) *Contract* means a procurement contract under an award, and a procurement subcontract under a recipient's contract.

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

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

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

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

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

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

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

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

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

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

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

(t) *Obligations* mean the amounts of orders placed, contracts and grants awarded, services received and similar

transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subcontractors. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for good and other property received, for services performed by employees, contractors, subcontractors and other payees and other amounts becoming owed under programs for which no current services or performance are required.

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

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 1270.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of NASA funds is not program income. Except as otherwise provided in these regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

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

(z) *Project period* means the period established in the award document

during which NASA sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intellectual property and debt instruments.

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

(cc) *Recipient* means an organization receiving an award directly from NASA to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subcontractors, or contractors or subcontractors of recipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

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

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold.

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement,

even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e) of this section.

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

(hh) *Supplies* means all personal property excluding equipment, intellectual property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

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

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

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

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

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

(nn) *Unrecovered indirect cost* means the difference between the amount

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

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

§ 1260.103 Effect on other issuances.

For awards subject to this subpart, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this subpart shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1260.104.

§ 1260.104 Deviations.

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

§ 1260.105 Subawards.

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

Pre—Award Requirements

§ 1260.110 Purpose.

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

§ 1260.111 Pre-award policies.

(a) Use of grants and cooperative agreements, and contracts. In each instance, NASA shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or

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

(b) Public Notice and Priority Setting. NASA shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 1260.112 Forms for applying for Federal assistance.

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

(b) Applicants shall use those forms and instructions prescribed by NASA in § 1260.

§ 1260.113 Debarment and suspension.

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

§ 1260.114 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this subpart, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, NASA may impose

additional requirements as needed. Such applicant or recipient will be notified in writing as to the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 1260.115 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency’s procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. NASA shall follow the provisions of Executive Order 12770, “Metric Usage in Federal Government Programs.”

§ 1260.116 Resource Conservation and Recovery Act (RCRA).

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

§ 1260.117 Certifications and representations.

Unless prohibited by statute or codified regulation, NASA will allow recipients to submit certain certifications and representations required by statute, executive order, or

regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipient’s compliance with the pertinent requirements.

Post Award Requirements

Financial and Program Management

§ 1260.120 Purpose of financial and program management.

Sections 1260.121 through 1260.128 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 1260.121 Standards for financial management systems.

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

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

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

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

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

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

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

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

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

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

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

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the 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 and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

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

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

(2) The recipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, NASA may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

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

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

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

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

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

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

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

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

(l) Interest earned on Federal advances deposited in interest-bearing accounts in excess of \$250 per year shall be remitted annually to Department of Health and Human Services (DHHS), Payment Management System,

Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. In accordance with 31 CFR part 206, interest should be remitted electronically through the Automated Clearing House (ACT) to DHHS.

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

(m) Except as noted elsewhere in this subpart, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

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

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

§ 1260.123 Cost sharing or matching.

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

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

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

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

(4) Are allowable under the applicable cost principles.

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

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

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

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

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

shall be the lesser of paragraph (c) (1) or (2) of this section.

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

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

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

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

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

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

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

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made.

However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that NASA has approved the charges.

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

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

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

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

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

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

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

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

§ 1260.124 Program income.

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

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by NASA and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When NASA authorizes the disposition of program income as

described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the program regulations or the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 1260.114.

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

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

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

(h) Unless program regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 1260.125 Revision of budget and program plans.

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

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

(c) For nonconstruction awards, recipients shall request prior approvals

from NASA for one or more of the following program or budget related reasons.

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

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

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

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by NASA.

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

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

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

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

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, NASA is authorized, at its option, to waive cost-related and administrative prior written approvals required by this Part and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

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

(2) Initiated a non-time extension of the expiration date of the award of up

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

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

(ii) The extension requires additional Federal funds.

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

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless NASA provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

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

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

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

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

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

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

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

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

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

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

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

§ 1260.126 Non-Federal audits.

(a) Recipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501-7) and NASA regulations implementing OMB Circular A-128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of 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 paragraph (a) and (b), the recipient shall request disposition instructions from NASA or its successor Federal awarding agency. NASA shall observe one or more of the following disposition instructions.

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

(2) The recipient may be directed to sell the property under guidelines provided by NASA and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

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

§ 1260.133 Federally-owned and exempt property.

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

NASA for further Federal agency utilization.

(2) If NASA has no further need for the property, it shall be declared excess and reported to the General Services 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 (l)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by NASA.

(b) *Exempt property.* Title to nonexpendable personal property acquired with grant funds shall be vested in the recipient upon acquisition, unless it is determined that to do so is not in furtherance of the objectives of NASA. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in § 1260.27.

§ 1260.134 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

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

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether 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 recipients' property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

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

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

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

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

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

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

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

(viii) Unit acquisition cost.

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

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

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

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

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

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

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from NASA. NASA shall determine whether the equipment can be used to meet NASA's requirements. If no requirement exists within NASA, the availability of the equipment shall be reported to the General Services Administration by NASA to determine whether a requirement for the equipment exists in other Federal agencies. NASA shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

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

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's

participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

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

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

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

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

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 1260.135 Supplies and other expendable property.

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

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

§ 1260.136 Intangible property.

(a) The recipient may assert copyright in any work that is subject to copyright and was created, or for which copyright ownership was purchased, under an

award. NASA is granted a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

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

(c) NASA has the right to:

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

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

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

(e) Due to the substantial involvement on the part of NASA under a cooperative agreement, intellectual property may be produced by Federal employees and NASA contractors tasked to perform NASA assigned activities. Title to intellectual property created under the cooperative agreement by NASA or its contractors will initially vest with the creating party. Certain rights may be exchanged with the recipient.

§ 1260.137 Property trust relationship.

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

Procurement Standards

§ 1260.140 Purpose of procurement standards.

Sections 1260.141 through 1260.148 set forth standards for use by recipients

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

§ 1260.141 Recipient responsibilities.

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

§ 1260.142 Codes of conduct.

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

§ 1260.143 Competition.

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

§ 1260.144 Procurement procedures.

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

(1) Recipients avoid purchasing unnecessary items.

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

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

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

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

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

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

(v) The acceptance, to the extent practicable and economically feasible,

of products and services dimensioned in the metric system of measurement.

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

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

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

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

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

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

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

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

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 14 CFR part 1265, the implementation of Executive

Order 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for NASA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in NASA's implementation of this Regulation.

(2) The procurement is expected to exceed the small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

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

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

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

§ 1260.145 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 1260.146 Procurement records.

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

(a) Basis for contractor selection,

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

(c) Basis for award cost or price.

§ 1260.147 Contract administration.

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

§ 1260.148 Contract provisions.

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

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

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

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, NASA may accept the bonding policy and requirements of the recipient, provided the NASA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

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

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

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute

of all persons supplying labor and material in the execution of the work provided for in the contract.

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

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

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

Reports and Records**§ 1260.150 Purpose of reports and records.**

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

§ 1260.151 Monitoring and reporting program performance.

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

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

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

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

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

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

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

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

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

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

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

§ 1260.152 Financial reporting.

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

(b) NASA requires forecasts of the recipient's cash requirements for each of the four months following the quarter being reported, in the "Remarks" section of the report.

(c) Recipients are required to submit the original of the report for the Financial Management Office of the NASA Center which issued the agreement 15 working days following the end of each Federal fiscal quarter. Copies will be furnished to the appropriate grants officer (see § 1260.26(c)).

§ 1260.153 Retention and access requirements for records.

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

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

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

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

(3) When records are 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 section 1260.153(g).

(c) Copies of original records may be substituted for the original records if authorized by NASA.

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

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

(f) Unless required by statute, NASA shall place no restrictions on recipients that limit public access to the records of

recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records have belonged to NASA.

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

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

(2) *If not submitted for negotiation.* If the recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement**§ 1260.160 Purpose of termination and enforcement.**

Sections 1260.161 and 1260.162 set forth uniform suspension, termination and enforcement procedures.

§ 1260.161 Termination.

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

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

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

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

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

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

§ 1260.162 Enforcement.

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

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

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

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

(4) Withhold further awards.

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

(b) Hearings and appeals. In taking an enforcement action, NASA shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any 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 paragraphs (c) (1) and (2) of this section apply.

(1) The costs results from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.'s 12549 and 12689 and 14 CFR part 1265 (see Section 1260.113).

After-The Award Requirements

§ 1260.170 Purpose.

Sections 1260.171 through 1260.173 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1260.171 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. NASA may approve extensions when requested by the recipient.

(b) Unless NASA authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) NASA shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that NASA has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, NASA shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 1260.131 through 1260.137.

(g) In the event a final audit has not been performed prior to the closeout of an award, NASA shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 1260.172 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of NASA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 1260.126.

(4) Property management requirements in §§ 1260.131 through 1260.137.

(5) Records retention as required in § 1260.153.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the NASA and the recipient, provided the responsibilities of the recipient referred to in § 1260.173(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 1260.173 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, NASA may reduce the debt by the provisions of paragraph (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, NASA shall charge interest on an overdue debt in accordance with 4 CFR chapter II, "Federal Claims Collection Standards."

Appendix A to Subpart B of Part 1260—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with Executive Order 11246; "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act* (18 U.S.C. 874 and 40 U.S.C. 276c)—All

contracts in excess of \$2,000 for construction or repair awarded by recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.

3. *Davis-Bacon Act, as amended* (40 U.S.C. 276a to a-7)—When required by Federal program legislation, all construction contracts awarded by the recipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the NASA.

4. *Contract Work Hours and Safety Standards Act* (40 U.S.C. 327-333)—Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of

experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[T.D. ATF-382; (95R-0360)]

RIN 1512-AB61

Commerce in Explosives; Implementation of Provisions of Public Law 104-132, the Antiterrorism and Effective Death Penalty Act of 1996, Relating to Plastic Explosives

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule implements certain provisions of Public Law 104-132, the Antiterrorism and Effective Death Penalty Act of 1996. These regulations implement the law by requiring that all persons possessing plastic explosives on the date of enactment report the quantity of such explosives possessed and certain other information to the Director within 120 days after the date of enactment.

EFFECTIVE DATE: The regulations are effective on July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Gail E. Hosey, Firearms and Explosives Regulatory Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8310.

SUPPLEMENTARY INFORMATION:

Background

Public Law 104-132, 110 Stat. 1214, the "Antiterrorism and Effective Death Penalty Act of 1996" (hereafter "the Act") was enacted on April 24, 1996. The Act amended a number of provisions of the Federal explosives laws in 18 U.S.C. Chapter 40. Title VI of the Act, "Implementation of Plastic Explosives Convention", added new requirements to 18 U.S.C. Chapter 40 to implement the "Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991." In general, the amendments make it unlawful to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent. A number of exceptions are provided in the law, including an exception for possession of plastic explosives imported into or manufactured in the United States prior to April 24, 1996. This exception expires at the end of the 3-year period beginning April 24, 1996. See 18 U.S.C. 842(n)(2)(A).

Section 607 of the Act provides that, except as otherwise provided, the

amendments made by Title VI shall take effect 1 year after the date of enactment. Accordingly, the majority of the amendments made by Title VI do not take effect until April 24, 1997.

However, section 603 added a new section 842(o) to Title 18, U.S.C., which provides that any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment, shall report to the Secretary within 120 days after the date of enactment the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may prescribe by regulation.

This Treasury Decision adds a new Subpart J to the regulations in 27 C.F.R. Part 55 titled "Marking of Plastic Explosives." All regulations relating to Title VI of the Act will be in this subpart. A new section 55.181 implements the reporting requirement of section 842(o). This section requires that any person, other than an agency of the United States or the National Guard, possessing plastic explosive on April 24, 1996, submit a report to the Director, ATF, no later than August 22, 1996. The report must be written and shall include the quantity of explosives possessed, the name and address of the manufacturer or importer, any marks of identification, the location where the explosives are stored, and the name and address of the possessor.

The regulation adds two items of information to be reported in addition to the information required by statute, *i.e.*, storage location and name and address of the possessor. All information required by this final rule will assist ATF in determining whether plastic explosives are possessed in compliance with the law. Specifically, the information will assist in determining whether plastic explosives possessed after April 24, 1997, were imported into or manufactured in the United States prior to April 24, 1996 and are lawfully possessed under the 3-year exception.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action, because the economic effects flow directly from the underlying statute and not from this final rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the one-time reporting requirement of section 842(o) that must