

Another alternative examined was to establish regulations prohibiting the use of any containers that create an inaccessible center when stacked on pallets. This alternative was not acceptable as it will not allow the industry to make necessary container changes to meet changing retailer needs and will be an excessive restriction.

This final rule, which relaxes the lot stamp number requirement, impacts all handlers in the same manner and was viewed by the committee as the least restrictive and best solution. Relaxing the lot stamp number requirement solves the problems caused by changes in pallet sizes and container configurations as well as spares the industry future financial hardship. It allows the industry flexibility for future pallet size and container configurations.

A proposed rule concerning this relaxation was issued on January 24, 1996, and published in the Federal Register on February 1, 1996, (61 FR 3604). That rule provided a 30-day comment period which ended March 4, 1996. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Section 920.303 paragraph (d) is revised to read as follows:

§ 920.303 Container marking regulations.

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector; except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the

supervision of the Federal or Federal-State Inspection Service.

Dated: March 20, 1996.

Eric M. Forman,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 96–7436 Filed 3–26–96; 8:45 am]
BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0918]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority to authorize the Board's General Counsel to deny a request for stay of the effective date of a Board order. The Board itself would retain sole discretion to grant a request for stay of the effectiveness of any decision. This amendment corrects an unintentional omission from the Rules Regarding Delegation of Authority.

EFFECTIVE DATE: March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Assistant General Counsel (202/452–3711), or Christopher Greene, Attorney (202/452–2263), Legal Division. For users of Telecommunications Device for the Deaf (TDD) *only*, please contact Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In 1987, the Board, pursuant to its authority under the Bank Holding Company Act and section 11(k) of the Federal Reserve Act, delegated to its General Counsel authority to deny a request for stay of the effective date of a Board order (52 FR 48805, December 28, 1987). The Board reorganized its Rules Regarding Delegation of Authority (12 CFR part 265) in 1991 to make it easier to locate specific delegations (56 FR 25614, June 5, 1991). In taking this action, the General Counsel's authority to deny a request for stay of the effective date of an action taken by the Board was unintentionally omitted from the amended Rules Regarding Delegation of Authority. This final rule corrects this omission.

Public Comment

The provisions of 5 U.S.C. 553 relating to notice, public participation,

and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is technical and procedural in nature and does not constitute a substantive rule subject to the requirements of that section.

Regulatory Flexibility Act

No significant impact on small entities is expected.

Paperwork Reduction Act of 1995

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. In § 265.6, paragraph (a)(1) is revised to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(a) *Procedure*—(1) *Reconsideration of Board action.* Pursuant to § 262.3(i) of this chapter (Rules of Procedure) to determine whether or not to grant a request for reconsideration or whether to deny a request for stay of the effective date of any action taken by the Board with respect to an action as provided in that part.

* * * * *

By order of the Secretary of the Board of Governors of the Federal Reserve System, March 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7424 Filed 3–26–96; 8:45 a.m.]

Billing Code 6210–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1274

RIN 2700-AC07

Cooperative Agreements With Commercial Firms

AGENCY: Office of Procurement, Contract Management Division, NASA.

ACTION: Final rule.

SUMMARY: Current NASA regulations at 14 CFR part 1260 describe the use of cooperative agreements with educational institutions and non-profit organizations. This final regulation establishes the requirements for cooperative agreements with commercial firms.

EFFECTIVE DATE: March 27, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, (202) 358-0431.

SUPPLEMENTARY INFORMATION:

Background

NASA published a proposed rule in the Federal Register on June 27, 1995 (60 FR 33163). Interested parties were invited to submit comments. Almost 100 comments were received. All comments were considered in developing this final revision. The following section presents a summary of the major comments received and a response to each comment. Other changes have been made to improve clarity and readability.

Comment: The draft coverage requires synthesizing cooperative agreements awarded as a result of unsolicited proposals. This is not required by statute and may result in informing competitors of planned R&D and give them an opportunity to submit competing proposals thereby discouraging submission of innovative proposals from industry.

Response: As a general rule, it is important to be as open as possible about the expenditure of public funds and this principal led to requiring synopses of unsolicited proposals. It is recognized, however, that innovative proposals must be protected; therefore the policy allows the same exclusions as FAR 5.202(a)(8) which addresses a waiver to synopses requirements in the case of unique or innovative concepts.

Comment: The coverage requires that FAR cost principles be utilized for cooperative agreements. There is no statutory requirement for this and it will require commercial firms to establish special accounting procedures. Recommend flexible tracking of costs.

Response: Government policy is expressed in OMB Circular A-110

which states in Paragraph 27 that "The allowability of costs incurred by commercial organizations and those nonprofit 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".

Comment: Proposed rule appears to incorporate many features of a contract vs an assistance instrument. Proposed rule should be substantially rewritten.

Response: The proposed rule does contain some contractual aspects, but only those that are required by law or to ensure that public funds are appropriately expended. For example, the preaward certification requirements, treatment of property in a cooperative agreement, and much of the intellectual property coverage are required by law. Other aspects of the policy such as milestone payments, technical officer responsibilities, and liability and risk of loss are adaptations of contract language deemed necessary to protect both the recipient and NASA.

Comment: We note that the proposed rule provides for milestone billings. While this is a reasonable approach to managing the flow of funds, we are concerned that some may view these milestones as "go-no-go" decision points rather than a measure of progress against a recipient's best efforts. This area of the proposed regulation requires careful crafting so as to avoid inadvertently introducing a level of certainty that is not appropriate to cooperative agreements.

Response: The milestones are, in fact, "go-no-go" decision points. If a milestone cannot be met, the recipient should carefully consider revoking the agreement.

Comment: The proposed rule should be further clarified to provide that IR&D can be used for work performed under subcontracts issued pursuant to the cooperative agreement. This clarification is required to eliminate potential IR&D unallowability due to the interpretation that second tier work is required by contract. The definition should also recognize the possibility that the company's contribution may be Manufacturing and Production Engineering (M&PE) costs.

Response: IR&D costs may be recovered under other Government awards as an allowable cost only by the recipient (an individual firm or members of a consortium). While these costs of the recipient may be expended under subcontracts, the subcontractor may not recover any expenditures as IR&D costs.

Costs incurred by a recipient which may be classified as M&PE costs will

generally not be permitted to be recovered under other Government awards.

Comment: "Resource Contribution" This term includes "in-kind contributions" which is not defined elsewhere, even though "cash contributions" are defined. The term "in-kind" is also used elsewhere in the proposed rule. This is an area where significant misunderstandings can arise and the term should be defined. We suggest that NASA use the definition in the now superseded OMB Circular A-110, Attachment E, Paragraph 2.d. (1976).

Response: The term "in-kind contribution" has been removed from the regulation and replaced with "non-cash" to avoid misunderstanding.

Comment: "Revocation" This definition needs to recognize mutuality as opposed to the proposed version which describes cancellation of NASA sponsorship, inferring one-sided activity.

Response: Agree. The definition has been amended.

Comment: A number of comments were received regarding the treatment of patent rights issues. For the most part, the treatment of patent rights is controlled by legislation and not within the purview of the agency to amend.

Response: NA

Comment: Section 1274.204

Evaluation and Selection. (a) As written, the regulation states that a typical CAN will have only one technical evaluation factor, e.g., technology transfer, enhancing U.S. competitiveness, etc. It then describes any number of more detailed "subfactors" which should be used, e.g., "level of commitment (contribution of private resources to the project)". In our view the "single" evaluation factor described is really not an evaluation factor, but rather the objective of the cooperative agreement. The "subfactors" appear to be the real evaluation factors. We recommend the regulation be revised accordingly.

Response: Many of the subfactors stated for evaluation could be considered for any type of award (contract, grant, or cooperative agreement). It is the single evaluation factor that establishes cooperative agreement nature of the evaluation and ensures that the subfactors are evaluated within the scope and intent of a cooperative agreement structure.

Comment: When the total value of the agreement is less than \$5m, the regulation says "Cost and [sic] pricing data should not normally be required." We strongly recommend that the word "normally" be deleted. Cost or pricing data should never be required for a

cooperative agreement. Such a requirement is totally inappropriate for this type of financial arrangement.

Response: The cooperative agreement policy is structured to minimize the bureaucratic impact on the recipient during the course of performance. Minimal reporting of any kind is required and no cost reporting is required (except in the event of termination). We still must ensure that Government funds are being expended wisely. This is accomplished through two specific means. The first is a careful analysis of the proposed cost. The second is ensuring that the milestones are accomplished. Other than cost or pricing data may be an integral part of ensuring that the proposed cost is reasonable since no other adequate means may be available. The guidance has been changed to indicate that cost or pricing data (i.e., certified cost and pricing data in accordance with FAR 15.8 following the changes required by FASA) should never be required.

Comment: Section 1274.401
Government Property. The guidance regarding the acquisition of property for use on a cooperative agreement further shows the "contract" nature of this proposed rule. This requirement indicates a NASA belief that a recipient will structure the costing for the cooperative agreement in such a way that NASA dollars fund certain work and the recipient's dollars will fund other work. In reality, many recipients will account for the costs of a total agreement, including purchases of equipment, billing only its share of the total. In this scenario, NASA does not fund specific work, but funds a percentage of the total. The proposed Cooperative Agreements language would require separation of tasks that is unnecessary for any other purpose of the recipient and only increases costs of all work.

Response: Statutorily, equipment purchased with Government funds is Government equipment. Since NASA has no interest in acquiring equipment procured under a cooperative agreement, it is in both the recipient's and NASA's best interests that equipment be provided as a non-cash contribution of the recipient.

Comment: Section 1274.701
Suspension or Revocation. We strongly support the language in this section which provides that *either party* may revoke the agreement if acceptable technical progress is not made or there is a shift in technical emphasis. We recommend this same bilateral treatment be provided for suspension. The cooperative agreement should provide like rights to both parties.

Response: Sections 1274.701 and 1274.922 have been amended to state that either party may suspend the cooperative agreement.

Comment: Section 1274.903
Responsibilities. (b) NASA Responsibilities. NASA must not contract with other than the recipient without the recipient reaching a non-disclosure agreement with the proposed NASA contractor prior to the placing of the contract. Notification to the recipient is insufficient to protect recipient's intellectual property.

Response: It is preferred that NASA contractors not perform NASA duties and responsibilities under a cooperative agreement, but at times, that may be unavoidable. Protection of the recipient's trade secrets and other confidential data is covered by § 1274.905(b)(2) and (b)(3). A separate non-disclosure agreement should not be required. Any inventions made by a NASA contractor as a result of doing work for NASA will not be disclosed if doing so would compromise Recipient's trade secrets. However, the contractor has the first option to retain title to inventions made while doing work for NASA that do not compromise Recipient's trade secrets.

Comment: The limitation on disputes to those arising three (3) months prior to the written notification of paragraph (d) is too limiting and should be expanded to six to twelve months to correct this. It is suggested that paragraph (c) be modified to clarify when the three (3) month period begins.

Response: Disagreements between NASA and its contractors and recipients occur on a regular basis, but are resolved at low levels within the respective organizations as they should be. This provision attempts to provide another avenue for disputes in those extremely rare instances where resolution at the lower levels fails. The clause has been rewritten to clarify when the three (3) month period begins.

Comment: We strongly disagree with this paragraph which states that "all preceding payment milestones must be completed before payment can be made for the next payment milestone". Activities captured in milestones are not necessarily sequential in nature. Payment milestones are supposed to provide a mechanism for triggering payment of the NASA pre-agreed contribution at the accomplishment of the particular milestone.

Response: In order to ensure that a cooperative agreement is completed and that neither party "games" the other, it is critical that payment for milestones be made in the order that the milestones are established. It is important to note

that the milestones are primarily established by the recipient and negotiated with NASA, so the recipient is able to establish milestones which represent the work to be accomplished sequentially under the cooperative agreement.

Comment: Section 1274.911(b)(4)(i)— In this paragraph the term "Administrator" is used. If it is to mean the same as that in § 1272.102, then the term should be included in the "Definition" section of the provision. If another person is intended, the paragraph should be revised.

Response: The definition of "Administrator" in § 1274.912(a)(1) has been added to the Definitions in 1274.911.

Comment: Section 1274.911(b)(6)— In line 10 it is unclear who in NASA can approve the waiver. This should be clarified.

Response: The Associate Administrator for Procurement has been substituted for NASA.

Comment: Section 1274.915—
Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions. This clause gives NASA the right to, in effect, block the sale of a company to a foreign firm. We strongly recommend this clause be deleted.

Response: The purpose of cooperative agreements is to enhance US competitiveness, create jobs, improve the balance of payments, etc. These objectives may or may not be advanced by sale to a foreign firm but would form the basis of NASA's decision. The clause does not give NASA the right to prevent the sale; it only provides for consultation between the parties to determine how to best protect the Government's interests. If an acceptable solution cannot be reached, the agreement could be terminated.

Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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 requirement as follows: information collection has been approved under OMB control number 2700-0092.

List of Subjects in 14 CFR Part 1274

Grant programs, Business and industry.

Tom Luedtke,
Deputy Associate Administrator for Procurement.

Accordingly, part 1274 is added to 14 CFR chapter V to read as follows:

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

Subpart A—General

- 1274.101 Purpose.
- 1274.102 Definitions.
- 1274.103 Effect on other issuances.
- 1274.104 Deviations.
- 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

Subpart B—Pre-Award Requirements

- 1274.201 Purpose.
- 1274.202 Solicitations and proposals.
- 1274.203 Intellectual property.
- 1274.204 Evaluation and selection.
- 1274.205 Award procedures.
- 1274.206 Document format and numbering.
- 1274.207 Distribution of cooperative agreements.

Subpart C—Administration

- 1274.301 Delegation of administration.
- 1274.302 Transfers, novations, and change of name agreements.

Subpart D—Government Property

- 1274.401 Government property.

Subpart E—Procurement Standards

- 1274.501 Subcontracts.

Subpart F—Reports and Records

- 1274.601 Retention and access requirements for records.

Subpart G—Suspension or Termination

- 1274.701 Suspension or termination.

Subpart H—After-the-Award Requirements

- 1274.801 Purpose.
- 1274.802 Closeout procedures.
- 1274.803 Subsequent adjustments and continuing responsibilities.

Subpart I—Other Provisions and Special Conditions

- 1274.901 Other provisions and special conditions.
- 1274.902 Purpose.
- 1274.903 Responsibilities.
- 1274.904 Resource Sharing Requirements.
- 1274.905 Rights in Data.
- 1274.906 Designation of New Technology Representative and Patent Representative.
- 1274.907 Disputes.
- 1274.908 Milestone Payments.
- 1274.909 Term of this Agreement.
- 1274.910 Authority.
- 1274.911 Patent Rights.
- 1274.912 Patent Rights—Retention by the Recipient (Large Business).

- 1274.913 Patent Rights—Retention by the Recipient (Small Business).
- 1274.914 Requests for Waiver of Rights—Large Business.
- 1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.
- 1274.916 Liability and Risk of Loss.
- 1274.917 Additional Funds.
- 1274.918 Incremental Funding.
- 1274.919 Cost Principles and Accounting Standards.
- 1274.920 Responsibilities of the NASA Technical Officer.
- 1274.921 Publications and Reports: Non-Proprietary Research Results.
- 1274.922 Suspension or Termination.
- 1274.923 Equipment and Other Property.
- 1274.924 Civil Rights.
- 1274.925 Subcontracts.
- 1274.926 Clean Air-Water Pollution Control Acts.
- 1274.927 Debarment and Suspension and Drug-Free Workplace.
- 1274.928 Foreign National Employee Investigative Requirements.
- 1274.929 Restrictions on Lobbying.
- 1274.930 Travel and Transportation.
- 1274.931 Electronic Funds Transfer Payment Methods.
- 1274.932 Retention and Examination of Records.

Appendix A to Part 1274—Contract Provisions

Appendix B to Part 1274—Reports

Appendix C to Part 1274—Listing of Exhibits
Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

Subpart A—General

§ 1274.101 Purpose.

(a) This part establishes uniform administrative requirements for NASA cooperative agreements awarded to commercial firms. Cooperative agreements are ordinarily entered into with commercial firms to—

- (1) Support research and development,
- (2) Provide technology transfer from the Government to the recipient, or
- (3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness.

(b) An award may not be made to a foreign government. Award to foreign firms is not precluded. The approval of the Associate Administrator for Procurement is required to exclude foreign firms from submitting proposals.

§ 1274.102 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Associate Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The recipient's cash outlay, including the outlay of

money contributed to the recipient by third parties.

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

Commercial item. The definition in 48 CFR 2.101 (FAR) is applicable.

Cooperative agreement. As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This regulation covers only cooperative agreements with commercial firms. Cooperative agreements with universities and non-profit organizations are covered by 14 CFR part 1260.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government except that the recipient's contribution may be reimbursable under other Government awards as allowable IR&D costs pursuant to 48 CFR 1831.205–18 (NFS).

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

Days. Calendar days, unless otherwise indicated.

Government furnished equipment. Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a Recipient and equipment procured by the Recipient with Government funds under a cooperative agreement.

Grant Officer. A Government employee who has been delegated the authority to negotiate, award, or administer grants or cooperative agreements. A Contracting Officer may serve as a Grant Officer if authorized by installation procurement regulations.

Incremental funding. A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, a consortium, a partnership, etc.

Resource contribution. The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

Support contractor means a NASA contractor performing part or all of the NASA responsibilities under a cooperative agreement.

Suspension. An action by NASA or the recipient that temporarily discontinues efforts under an award, pending corrective action or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Order 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189 and Executive Order 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235, "Debarment and Suspension."

Technical Officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement. A Contracting Officer's Technical Representative may serve as a Technical Officer.

Termination. The cancellation of a cooperative agreement in whole or in part, by either party at any time prior to the date of completion.

§ 1274.103 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1274.104.

§ 1274.104 Deviations.

(a) *Exceptions.* The Associate Administrator for Procurement may grant exceptions for classes of or individual cooperative agreements from the requirements of this part when exceptions are not prohibited by statute.

(b) *Applicability.* A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

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

(3) When a NASA form or other form is prescribed by this part, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) *Request for deviations.* Requests for authority to deviate from this

regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum:

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought.

(2) Detailed rationale for the request, including any pertinent background information.

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request(s).

(5) A description of the intended effect of the deviation.

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

§ 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

(a) As soon as possible after the initial decision is made by a Headquarters program office or Center procurement personnel to use the CAN process, the cognizant program office or procurement office shall notify the Associate Administrator for Procurement (Code HS) of the intent to use a CAN in all cases where the total Government funds to be awarded in response to CAN proposals is expected to equal or exceed \$10 million. All such notifications, as described below, shall be concurred in by the Procurement Officer. This requirement also applies in those cases where an unsolicited proposal is received and a decision is made to award a cooperative agreement in which the recipient (or one or more members of a "team" of recipients) is a commercial firm and the total Government funds are expected to equal or exceed \$10 million.

(b) The required notification is to be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: can@mercury.hq.nasa.gov. The notification must include the following information, as a minimum:

(1) Identification of the cognizant center and program office;

(2) Description of the proposed program for which proposals are to be solicited;

(3) Rationale for decision to use a CAN rather than other types of solicitations;

(4) The amount of Government funding to be available for awards;

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN;

(6) The percentage of cost-sharing to be required; and

(7) Tentative schedule for release of CAN and award of cooperative agreements.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer, within 5 working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described;

(2) Whether Code HS will require review and approval of the CAN before its issuance;

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)); and

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or center may proceed with release of the CAN and award of the cooperative agreements as described.

Subpart B—Pre-Award Requirements

§ 1274.201 Purpose.

Sections 1274.202 through 1274.207 prescribe forms and instructions and address other pre-award matters.

§ 1274.202 Solicitations and proposals.

(a) Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible. An award will normally be made as a result of a Cooperative Agreement Notice (CAN) which envisions a cooperative agreement as the award instrument. A Commerce Business Daily synopsis or a synopsis on the NASA Acquisition Internet Service will be used to publicize the CAN.

(b) *Unsolicited Proposals.* (1) An award may be made as a result of an unsolicited proposal. The unsolicited proposal must evidence a unique and innovative idea or approach which is not the subject of a current or anticipated solicitation. When a cooperative agreement is awarded as a result of an unsolicited proposal, a Commerce Business Daily synopsis or a synopsis on the NASA Acquisition Internet Service will be used to provide an opportunity for other firms/consortia to express an interest in the agreement

unless the exception in 48 CFR 5.202(a)(8) (FAR) applies. Respondents should be given a minimum of thirty days to respond. If interest is expressed, a decision must be made to proceed with the award or to issue a solicitation for competitive proposals.

(2) Prior to an award made as the result of an unsolicited proposal, the award must be approved by the Procurement Officer if NASA's total resource contribution is below \$5 million. Center Director approval is required if NASA's total resource contribution is \$5 million or more. For Headquarters cooperative agreements, approval by the Associate Administrator for Procurement is required if NASA's total resource contribution is \$5 million or more.

(c) *Cost and payment matters.* (1) The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient shall be governed by the FAR cost principles, 48 CFR part 31. If the Recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(2) A substantial resource contribution on the part of the Recipient is required. The Recipient is expected to contribute at least 50% of the total resources required to accomplish the cooperative agreement. Recipient contributions may be either cash or non-cash or both. In those cases in which a contribution of less than 50% is anticipated from the Recipient, approval of the Associate Administrator for Procurement (Code HS) is required prior

to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50% is warranted.

(3) Cooperative agreements are funded by NASA in a fixed amount. Payments in fixed amounts will be made by NASA in accordance with "Milestone Billings" which are discussed in paragraph (c)(4) of this section. If the Recipient completes the final milestone, final payment is made, and NASA will have completed its financial responsibilities under the agreement. However, if the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding will be limited to milestone payments already made plus NASA's share of costs required by the Recipient to meet commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event shall these additional costs or payment exceed the amount of the next payable milestone billing amount.

(4) Milestone billings is the method of payment to the Recipient under cooperative agreements. Performance based milestones are used as the basis of establishing a set of verifiable milestones for payment purposes. Each milestone payment shall be established so that the Government payment is at the same share ratio as the cooperative agreement share ratio. If the Recipient is a consortium, the Articles of Collaboration is required to contain an extensive list of performance based milestones that the consortium has agreed to. Generally, payments should not be made more than once monthly; ideally, payments will be made about every 60 to 90 days but in all cases should be made on the basis of verifiable, significant events as opposed to the passage of time. The last payment milestone should be large enough to ensure that the Recipient completes its responsibilities under the cooperative agreement (or funds should be reserved for payment until after completion of the cooperative agreement). The Government technical officer must verify completion of each milestone to the Grants Officer as part of the payment process. If the Government's projected cash contribution to a cooperative agreement exceeds \$5 million, approval of the Milestone Payment clause, including the milestones and anticipated payments, by the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should contain

substantially the same information required by 48 CFR (NFS) 1832.7006.

(5) Cooperative agreements may be incrementally funded subject to the following:

(i) The total value of the NASA cash contribution is \$50,000 or more.

(ii) The period of performance overlaps the succeeding fiscal year.

(iii) The funds are not available to fully fund the cooperative agreement at the time of award.

(6) Cost sharing requirements on cooperative agreements with commercial firms are based on section 23 of OMB Circular A-110, November 23, 1993. Only cash or certain non-cash resources are acceptable sources for the Recipient contribution to a cooperative agreement. Acceptable non-cash resources include such items as purchased equipment, equipment, labor, office space, etc. The actual or imputed value of intellectual property such as patent rights, data rights, trade secrets, etc., are not acceptable as sources for the Recipient contribution.

(7) Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the Recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship.

(8) The Recipient's resource share of the cooperative agreement may be allocated as part of its IR&D program in accordance with a class deviation pursuant to 48 CFR 1831.205-18 (NFS).

(9) The CAN must provide a description of the non-cash Government contribution (personnel, equipment, facilities, etc.) as part of the Government's contribution to the cooperative agreement in addition to funding. The offeror may propose that additional non-cash Government resources be provided under two conditions. First, the offeror is responsible for verifying the availability of the resources and their suitability for their intended purpose and, second, those resources are part of the Government contribution (which must be matched by the Recipient) and paid for directly by the awarding organization.

(d) *Consortia as recipients.* (1) The use of consortia as Recipients for cooperative agreements is encouraged. Consortia will tend to bring to a cooperative agreement a broader range of capabilities and resources. A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a

partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms which normally compete for commercial or Government business or may be made up of firms which perform complementary functions in a given industry. The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(2) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. It should also address to the extent appropriate: commitments of financial, personnel, facilities and other resources, a detailed milestone chart of consortium activities, accounting requirements, subcontracting procedures, disputes, term of the agreement, insurance and liability issues, internal and external reporting requirements, management structure of the consortium, obligations of organizations withdrawing from the consortia, allocation of data and patent rights among the consortia members, agreements, if any, to share existing technology and data, the firm which is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, employee policy issues, etc.

(3) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process.

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

§ 1274.203 Intellectual property.

(a) A cooperative agreement covers the disposition of rights relating to inventions and patents between NASA and the Recipient. If the Recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) Patent rights clauses are required by statute and regulation. The clauses exist for Recipients of the Agreement whether they are:

(1) Other than small business or nonprofit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) There are five situations in which inventions may arise under a cooperative agreement: Recipient Inventions, Subcontractor Inventions, NASA Inventions, NASA Support Contractor Inventions, and Joint Inventions with Recipient.

(d)(1) *Recipient inventions.* (i) A Recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business Recipient initially vests with NASA. The Recipient may request a waiver under the NASA Patent Waiver Regulations to obtain title to inventions made under the Agreement. Such a request may be made in advance of the Agreement (or 30 days thereafter) for all inventions made under the Agreement. Alternatively, requests may be made on a case by case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) A Recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term "nonprofit organization" is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code. The Government obtains an irrevocable, nonexclusive, royalty-free license.

(2) *Subcontractor inventions.* (i) *Large business.* If a Recipient enters a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the Agreement to be done in the United States, its possessions, or Puerto Rico, section 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The subcontractor may request a waiver

under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business Recipient can (see paragraph (d)(1)(i) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the Recipient, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) *Non-profit organization or small business.* In the event the Recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under the Agreement, the requirements of 35 U.S.C. 200 *et seq.* regarding "Patent Rights in Inventions Made With Federal Assistance," apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the Agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(iii) *Work outside the United States.* If the Recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(iv) *Additional rights.* Notwithstanding paragraphs (d)(1) and (d)(2) (i) through (iii) of this section, and in recognition of the Recipient's substantial contribution, the Recipient is authorized, subject to rights of NASA set forth elsewhere in the Agreement, to:

(A) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary, or

(B) If unable to reach agreement pursuant to paragraph (d)(2)(iv)(A) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the

applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the Recipient. This exception does not change that. The exception does not authorize the Recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(3) *NASA inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an Agreement. Upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(4) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under the Agreement since the rights obtained by a NASA support contractor could work against the rights needed by the Recipient. In the event NASA support contractors are tasked to work under the Agreement and inventions are made by support contractor employees, the support contractor will normally obtain rights in such inventions. However, if NASA has the right to acquire or has acquired title to such inventions, upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(5) *Joint inventions.* (i) NASA and the Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of Recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified

period, from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e). The grant officer negotiating the Agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(ii) NASA support contractors may be joint inventors. If a NASA support contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA Support Contractor Inventions. The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a Recipient employee, the NASA support contractor and Recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the Recipient.

(e) *Licenses to recipient(s).* (1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, all Recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the Recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each Recipient subject invention, it is only equitable that the Recipient receive, at a minimum, a

revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) *Notice requirements.* Once a Recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the Recipient, is published in the Federal Register, providing the public opportunity for filing written objections for 60 days.

(f) *Preference for United States manufacture.* Despite any other provision, the Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the Recipient as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Associate Administrator for Procurement (Code HS) upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(g) *Space Act agreements.* Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act Agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(h) *Data rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, grant officers for the

Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources.

However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the Recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (depending on the technology, two to five years after production of the data) may be established after which the data first produced by the Recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas need to be covered.

(4) For data, including software, first produced by the Recipient under the agreement, the Recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled "Publication and Reports." Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with

the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the Recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.204 Evaluation and selection.

(a) *General.* A single technical evaluation factor is typically used for CANs. That evaluation factor should be one of the following: providing research and development or technology transfer, enhancing U.S. competitiveness, or developing a capability among U.S. firms. Award to foreign firms is not precluded if the evaluation factor is satisfied. Subfactors could include such things as fostering U.S. leadership, potential to advance technologies anticipated to enhance U.S. competitiveness, timeliness of proposed accomplishments, private sector commitment to commercialization, identification of specific potential commercial markets, appropriateness of business risk, potential for broad impact on the U.S. technology and knowledge base, level of commitment (contribution of private resources to the project), appropriateness of team member participation and relationships, appropriateness of management planning, relevant experience, qualifications and depth of management and technical staff, quality and appropriateness of resources committed to the project, performance benchmarks, technical approach, business approach/resource sharing, past performance, the articles of collaboration, etc.

(b) *Technical evaluation.* (1) Competitive technical proposal information shall be protected in accordance with 48 CFR 15.411 (FAR), Receipt of Proposals and quotations. Unsolicited proposals shall be protected in accordance with 48 CFR 15.508 (FAR), Prohibitions, and 48 CFR 15.509 (FAR), Limited use of data.

(2) The technical officer will evaluate proposals in accordance with the criteria in the CAN. Proposals selected for award will be supported by documentation as described in paragraph (c)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(3) The technical evaluation of proposals may include peer reviews. Since the business sense of a cooperative agreement proposal is critical to its success, NASA should reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as

the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions. The use of outside evaluators shall be approved in accordance with 48 CFR 1815.413-2(c)(2) (NFS). It is strongly recommended that a numerical scoring system be established to rank proposals. Data provided to outside evaluators should be protected in accordance with 48 CFR 1815.413-2(e) (NFS).

(4) Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Organizations submitting unaccepted proposals will be notified in writing.

(c) *Documentation requirements.* For proposals selected for award, the technical officer will prepare and furnish to the grant officer the following documentation:

(1) For a competitively selected proposal, a signed selection statement and technical evaluation based on the evaluation criteria stated in the solicitation.

(2) For an unsolicited proposal, a justification for acceptance of an unsolicited proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(i) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(ii) Overall scientific or technical merits of the proposal.

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

(iv) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(v) Current, open solicitations under which the unsolicited proposal could be evaluated.

(d) *Cost evaluation.* (1) The grant officer and technical team will determine whether the overall proposed cost of the project is reasonable and that the Recipient's contribution is valid, verifiable, and available. Commitments should be obtained and verified to the extent practical from the offeror or

members of the consortia that the proposed contributions can and will be made as specified in the proposal or statement of work.

(i) If the Recipient's verified share on a cooperative agreement equals or exceeds 50% of the total cost of the agreement and the total value of the agreement is less than \$5 million, the cost evaluation of the offeror's proposal should focus on the overall reasonableness and timing of the proposer's contribution. Cost or pricing data should not be required and information other than cost or pricing data (defined in 48 CFR 15.801) (FAR) should not normally be required.

(ii) If the Recipient's share is projected to be less than 50% or the total value of the agreement is more than \$5 million, a more in-depth analysis of the proposed costs should be undertaken. Only information other than cost or pricing data should be required. An analysis consistent with 48 CFR 15.805-3 through 15.805-5 (FAR) should be performed.

(2) As part of the evaluation of the cost proposal, the source of the recipient's contribution should be determined. Each of the cost elements contributed by the recipient and their amounts should be identified. If the contribution will consist at least in part of IR&D, the extent to which the IR&D may be recoverable from Government awards should be established. This will involve using the estimated Government participation rate of the recipient's General and Administrative indirect cost base for the period of the cooperative agreement. The results of the evaluation are to be documented in the cooperative agreement file.

(e) *Consortium*. If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

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

§ 1274.205 Award procedures.

(a) *General*. Multiple year cooperative agreements are encouraged, but

normally they should not extend beyond two years.

(b) *Award above proposed amount*. Awards of cooperative agreements in response to competitive solicitations will not result in providing more NASA funds or resources than was anticipated in the Recipient's proposal. If additional funds or resources are deemed necessary, they will be provided by the Recipient and the Government cost share percentage will be adjusted downward.

(c) *Changes to cooperative agreements*. Cost growth or in-scope changes shall not increase the amount of NASA's contribution. Additional costs which arise during the performance of the cooperative agreement are the responsibility of the Recipient. Funding for work required beyond the scope of the cooperative agreement must be sought through the submission of a proposal which will be treated as an unsolicited proposal.

(d) *Bilateral award*. All cooperative agreements awarded under this regulation will be awarded on a bilateral basis.

(e) *Certifications and representations*.

(1) *General*. Unless prohibited by statute or codified regulation, Recipients will be encouraged to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the Recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure Recipients' compliance with the pertinent requirements.

(2) Civil rights requirements—nondiscrimination in certain Federally-funded programs. Recipients must furnish assurances of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each cooperative agreement, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained from the grant officer. Upon acceptance, the grant officer will forward assurances to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(3) *Debarment certification*. NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by §§ 1265.110 and 1265.610.

(4) *Lobbying certification*. A Lobbying Certification in accordance with 14 CFR

part 1271 will be obtained prior to award.

(f) *Indemnification*. Indemnification under Public Law 85-804, as amended (50 U.S.C. 1431 *et seq.*) is not authorized for cooperative agreements.

§ 1274.206 Document format and numbering.

(a) *Formats*. Grant officers are authorized to use the format in Exhibit A of Appendix C of this part for the award of all cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed.

(b) *Cooperative agreement numbering*. The identification numbering system for all cooperative agreements shall conform to 48 CFR 1804.7102-3 (NFS), except that a NCC prefix will be used in lieu of the NAS prefix.

§ 1274.207 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090-2934, and any other appropriate recipient. Copies of the statement of work, contained in the Recipient's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

Subpart C—Administration

§ 1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) *Transfer of cooperative agreements*. Novation is the only means by which a cooperative agreement may be transferred from one Recipient to another.

(b) *Novation and change of name*. All novation agreements and change of name agreements of the Recipient, prior to execution, shall be reviewed by NASA legal counsel for legal sufficiency prior to approval.

Subpart D—Government Property

§ 1274.401 Government property.

The accomplishment of a cooperative agreement may require the purchase of

equipment for a wide range of purposes. If this equipment is purchased with Government funds, i.e., as part of the Government contribution to the cooperative agreement, it becomes Government property and must be disposed of in accordance with 48 CFR part 45 (FAR) at the conclusion of the cooperative agreement. In some cases, this may meet the needs of the parties. If, however, the Recipient may need the equipment to continue commercial efforts following the cooperative agreement, it should be purchased by the Recipient and included as a non-cash contribution of the Recipient. In this way, it is not procured, not even in part, with Government funds and the Government acquires no ownership interest. Procurement by the Recipient may be before or during the performance of the cooperative agreement.

Subpart E—Procurement Standards

§ 1274.501 Subcontracts.

Recipients are not authorized to issue grants or cooperative agreements to subrecipients. All contracts, including small purchases, awarded by Recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable and may be subject to approval requirements cited in § 1274.925.

Subpart F—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This subpart sets forth requirements for record retention and access to records for awards to Recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

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

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

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

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

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

(f) Unless required by statute, NASA shall not place restrictions on Recipients that limit public access to the records of Recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) This paragraph (g) applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

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

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

covered by the proposal, plan, or other computation.

Subpart G—Suspension or Termination

§ 1274.701 Suspension or termination.

A cooperative agreement provides both NASA and the Recipient the ability to terminate the agreement if it is in their best interests to do so. For example, NASA may terminate the agreement if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program. Similarly, the Recipient may terminate the agreement if, for example, technical progress is not being made, if the firms are shifting their technical emphasis, or if other technological advances have made the effort obsolete. NASA or the Recipient may also suspend the cooperative agreement for a short period of time if an assessment needs to be made as to whether the agreement should be terminated.

Subpart H—After-the-Award Requirements

§ 1274.801 Purpose.

Sections 1274.802 and 1274.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1274.802 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the Recipient.

(b) The Recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with subpart D of this part.

§ 1274.803 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in § 1274.933.

(b) Property management requirements in subpart D of this part.

(c) Records retention as required in § 1274.601.

Subpart I—Other Provisions and Special Conditions

§ 1274.901 Other provisions and special conditions.

The provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements. The provisions at §§ 1274.902 through 1274.909 are to be incorporated in full text substantially as stated in this part. The provisions at §§ 1274.910 through 1274.933 will be by reference incorporated in an enclosure to each cooperative agreement (see Exhibit A of Appendix C of this part). For inclusion of provisions in subcontracts, see Subpart E—Procurement Standards of this part.

§ 1274.902 Purpose.

Purpose (FEB 1996)

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to _____. This cooperative agreement will advance the technology developments and research which have been performed on _____. The specific objective is to _____. This work will culminate in _____.

[End of provision]

§ 1274.903 Responsibilities.

Responsibilities (FEB 1996)

(a) This cooperative agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) *NASA responsibilities.* Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement. The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility	Start	End
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(c) *Recipient responsibilities.* The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto.). The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility	Start	End
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[End of provision]

§ 1274.904 Resource Sharing Requirements.

Resource Sharing Requirements (FEB 1996)

(a) NASA and the Recipient will share in providing the resources necessary to perform

the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a _____ (NASA) - _____ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by section 23, "Cost Sharing or Matching," of OMB Circular A-110. The "applicable federal cost principles" cited in OMB Circular A-110 shall be determined in accordance with § 1274.919.

(b) The Recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to 48 CFR 1831.205-18 (NFS).

§ 1274.905 Rights in Data.

Rights in Data (FEB 1996)

(a) Definitions.

Data, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) *Data categories—(1) General.* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided in paragraphs (b)(2) through (6) of this provision.

(2) *Background data.* In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) *Data first produced by Recipient.* In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of [insert "two" to "five"] years after development of the data and be disclosed and used by ["NASA" or "the Government," as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of ["NASA" or "the Government" as

appropriate] during that period. In order that ["NASA" or the "Government", as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA.* As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to (—) years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires.

(5) *Copyright.* (i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this provision, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) *Oral and visual information.* If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein),

identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) *Disclaimer of Liability.* Notwithstanding paragraphs (6)(2) through (6) of this provision, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this provision; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this provision, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of data.* Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower Tier Agreements.* The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

[End of provision]

§ 1274.906 Designation of New Technology Representative and Patent Representative.

Designation of New Technology Representative and Patent Representative (FEB 1996)

(a) For purposes of administration of the clause of this cooperative agreement entitled "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Grant Officer to administer such clause:

Title	Office Code	Address
New Technology Representative		
Patent Representative		

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent

Representative. This clause shall be included in any subcontract hereunder requiring "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" clause or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 48 CFR 1827.375-3 (NFS).

[End of provision]

§ 1274.907 Disputes.

Disputes (FEB 1996)

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the _____ [Suggest this be the Center Director], who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at the same time. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after receiving this notification that a decision has been requested. The Dispute Resolution Official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.

[End of provision]

§ 1274.908 Milestone Payments.

Milestone Payments (FEB 1996)

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for payments may be based upon the Recipient's completion of specific tasks, submission of specified reports, or whatever is appropriate.] *Date Payment Milestone Amount*

(c) Upon submission by the Recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the grant officer shall authorize payment.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this provision. However, payment shall not be made prior to that date without the written consent of the Grant Officer.

(e) The Recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) All preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) Invoices hereunder shall be submitted in the original and five copies to the Grant Officer for certification.

[End of provision]

§ 1274.909 Term of this Agreement.

Term of this Agreement (FEB 1996)

The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

[End of provision]

§ 1274.910 Authority.

Authority (FEB 1996)

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451 *et seq.* (the Space Act).

[End of provision]

§ 1274.911 Patent Rights.

Patent Rights (FEB 1996)

(a) *Definitions.*

(1) *Administrator* means the Administrator or Deputy Administrator of NASA.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(3) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process

or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Recipient* means: (i) The signatory Recipient party or parties; or (ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) *Small business firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject invention* means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) *Allocation of principal rights.* (1) *Recipient inventions.* For other than Small Business Firm or Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)" provision applies. For Small Business Firm and Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)" provision applies.

(2) *NASA inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this provision. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) *NASA contractor inventions.* In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use its best efforts to

grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this provision. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) *Joint NASA and recipient inventions.* NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this provision.

(ii) For small business firms and nonprofit organizations, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) *Minimum rights reserved by the Government.* Any license or assignment granted Recipient pursuant to paragraph (b)(2), (b)(3), or (b)(4) of this provision will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors,

the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this provision, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

[End of provision]

§ 1274.912 Patent Rights—Retention by the Recipient (Large Business).

Patent Rights—Retention by the Recipient (Large Business) (FEB 1996)

(a) *Definitions.*

(1) *Administrator* means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) *Made*, as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Reportable item* means any invention, discovery, improvement, or innovation of the Recipient, whether or not the same is or may be patentable or otherwise protectable under title 35 of the United States Code, conceived

or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) *Small business firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

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

(b) Allocation of principal rights—(1) *Presumption of title*—(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called “the Act”), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Grants Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this provision. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this provision is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) *Waiver of rights*—(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy

of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the contract or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this provision or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) *Minimum rights reserved by the Government.* (1) With respect to each Recipient subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

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

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

(d) *Minimum rights to the Recipient.* (1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Recipient subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this provision. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Grants Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Grants Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Grants Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Grants Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such

inventions) and that the procedures required by paragraph (e)(1) of this provision have been followed.

(ii) A final report, within three months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Grants Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to 48 CFR 27.302(j) (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Grants Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this cooperative agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this provision; and

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

(2) If the Grants Officer learns of an unreported Recipient invention that the Grants Officer believes may be a subject invention, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Grants Officer, the Recipient shall—

(i) Include this Clause Patent Rights—Retention by the Recipient—(Large Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Recipient—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grants Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grants Officer.

(3) The Recipient shall promptly notify the Grants Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grants Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause of paragraph (g)(1)(i) or (1)(ii) of this provision, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this provision, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this provision, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances.* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR

part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

[End of provision]

§ 1274.913 Patent Rights—Retention by the Recipient (Small Business).

Patent Rights—Retention by the Recipient (Small Business) (FEB 1996)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal

Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.901 through 121.911 will be used.

(6) *Subject invention* means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) *Allocation of principal rights.* The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Recipient.*

(1) The Recipient will disclose each subject invention to NASA within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent

protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this provision may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Recipient will convey to NASA, upon written request, title to any subject invention—

(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this provision, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this provision; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this provision, but prior to its receipt of the written request of the Federal agency, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Recipient and protection of the Recipient right to file.* (1) The Recipient will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph (c) of this provision. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the

extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and 14 CFR part 1245, subpart 2, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Recipient action to protect the Government's interest.* (1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) of this provision and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this provision, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this provision. The Recipient shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not

less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention the following statement, "This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention."

(5) The Recipient shall provide the Grants Officer the following:

(i) A listing every 12 months (or such longer period as the Grants Officer may specify) from the date of the Agreement, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the Agreement listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Recipient has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Grants Officer, the Recipient shall—

(i) Include this clause (Patent Rights—Retention by the Recipient (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization.

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Recipient (Large Business)).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grants Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grants Officer.

(3) The Recipient shall promptly notify the Grants Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grants Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this provision, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the

subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this provision, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this provision that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances.* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) *Reporting on utilization of subject inventions.* The Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this provision. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Recipient.

(i) *Preference for United States manufacture.* The Recipient agrees that any

products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Recipient is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary functions the management of inventions; *provided*, that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees

of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Recipient could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(l) A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the cooperative agreement. If any reports contain information describing a "subject invention" for which the Recipient has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the Grants Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Recipient has applied for patents.

[End of provision]

§ 1274.914 Requests for Waiver of Rights—Large Business.

Requests For Waiver of Rights—Large Business (FEB 1996)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected Recipient. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall

include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific Section or Sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Grants Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Grants Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Grants Officer of the Administrator's determination. The Grants Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Grants Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in 14 CFR 1245.112(b).

[End of provision]

§ 1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (FEB 1996)

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers do not include:

(1) Sales of products or components;

(2) Licenses of software or documentation related to sales of products or components; or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Grants Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

[End of provision]

§ 1274.916 Liability and Risk of Loss.

Liability and Risk of Loss (FEB 1996)

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

[End of provision]

§ 1274.917 Additional Funds.

Additional Funds (FEB 1996)

Pursuant to this agreement, NASA is providing a fixed amount of funding for activities to be undertaken under the terms of this cooperative agreement. NASA is under no obligation to provide additional funds. Under no circumstances shall the Recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement.

[End of provision]

§ 1274.918 Incremental Funding.

Incremental Funding (FEB 1996)

(a) Of the award amount indicated on the cover page of this agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA anticipates making additional allotments of funds as required.

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.

[End of provision]

§ 1274.919 Cost Principles and Accounting Standards.

Cost Principles and Accounting Standards (FEB 1996)

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled "Resource Sharing Requirements") shall be governed by the FAR cost principles, 48 CFR part 31. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.") Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

[End of provision]

§ 1274.920 Responsibilities of the NASA Technical Officer.

Responsibilities of the NASA Technical Officer (FEB 1996)

(a) The NASA Grant Administrator and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Grant Specialist shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the

terms and conditions of this cooperative agreement.

[End of provision]

§ 1274.921 Publications and Reports: Non-Proprietary Research Results.

Publications and Reports: Non-Proprietary Research Results (FEB 1996)

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement, shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.

(c) Prior approval by the NASA Technical Officer is required only where the Recipient requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. The Recipient shall submit the following technical reports:

(1) A performance report for every year of the cooperative agreement (except the final year). Each report is due 60 days before the anniversary date of the cooperative agreement and shall describe research accomplished during the report period.

(2) A summary of research, which is due by 90 days after the expiration date of the cooperative agreement, regardless of whether or not support is continued under another cooperative agreement. This report is intended to summarize the entire research accomplished during the duration of the cooperative agreement.

(e) Performance reports and summaries of research shall display the following on the first page:

- (1) Title of the cooperative agreement.
- (2) Type of report.
- (3) Period covered by the report.
- (4) Name and address of the Recipient's organization.
- (5) Cooperative agreement number.
- (f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:
 - (1) Original—Grant Officer.
 - (2) Copy—Technical Officer.
 - (3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090-2934.

[End of provision]

§ 1274.922 Suspension or Termination.

Suspension or Termination (FEB 1996)

(a) This cooperative agreement may be suspended or terminated in whole or in part by the Recipient or by NASA after consultation with the other party. NASA may terminate the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to

comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program.

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.

[End of provision]

§ 1274.923 Equipment and Other Property. Equipment and Other Property (FEB 1996)

(a) NASA cooperative agreements permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of \$5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

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

(c) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR 45.301 (FAR)), or to procure passenger carrying vehicles.

(d) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR 45.603 (FAR). The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the cooperative agreement.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government pursuant to 14 CFR 1260.408(d) prior to completion of the work) will remain with the Government.

(f) The Recipient shall establish and maintain property management standards for nonexpendable personal property and otherwise manage such property as set forth in 14 CFR 1260.507.

(g) Annually by October 31, the Recipient shall submit 2 copies of an inventory report which lists all Government furnished equipment and equipment acquired with Government funds in their custody as of September 30. The Recipient shall submit 2 copies of a final inventory report by 60 days after the expiration date of the cooperative agreement. The final inventory report shall contain a list of all Recipient acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in 14 CFR 1260.507(a)(1) (i), (ii), (iii), (v) through (viii) and beginning and ending dollar value totals for the reporting period and be submitted to the grant officer. When Government furnished equipment is no longer needed, the Recipient shall notify the Grants Officer, who will provide disposition instructions.

[End of provision]

§ 1274.924 Civil Rights.

Civil Rights (FEB 1996)

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d-1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

[End of provision]

§ 1274.925 Subcontracts.

Subcontracts (FEB 1996)

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Grant Officer consent is required for subcontracts over \$100,000, if not accepted by NASA in the original proposal. The Recipient shall provide the following information to the Grant Officer:

- (1) A copy of the proposed subcontract.
- (2) Basis for subcontractor selection.
- (3) Justification for lack of competition when competitive bids or offers are not obtained.
- (4) Basis for award cost or award price.

(c) The Recipient shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

[End of provision]

§ 1274.926 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts (FEB 1996)

If this cooperative agreement or supplement thereto is in excess of \$100,000, the Recipient agrees to notify the Grant Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of

Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a cooperative agreement in excess of \$100,000, the Recipient:

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 7414) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the cooperative agreement; and

(c) Agrees to include the criteria and requirements of this provision in every subcontract hereunder in excess of \$100,000, and to take such action as the Grant Officer may direct to enforce such criteria and requirements.

[End of provision]

§ 1274.927 Debarment and Suspension and Drug-Free Workplace.

Debarment and Suspension and Drug-Free Workplace (FEB 1996)

NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.

[End of provision]

§ 1274.928 Foreign National Employee Investigative Requirements.

Foreign National Employee Investigative Requirements (FEB 1996)

(a) The Recipient shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD-258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is

obtained from NASA Headquarters prior to completion of the NAC and performance of the cooperative agreement requires a foreign national to be given access immediately, the Technical Officer may submit an escort request to the Installation's Chief of Security. [End of provision]

§ 1274.929 Restrictions on Lobbying.

Restrictions on Lobbying (FEB 1996)

This award is subject to the provisions of 14 CFR part 1271 "New Restrictions on Lobbying."

[End of provision]

§ 1274.930 Travel and Transportation.

Travel and Transportation (FEB 1996)

(a) For travel funded by the government under this agreement, section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires the Recipient to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

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

[End of provision]

§ 1274.931 Electronic Funds Transfer Payment Methods.

Electronic Funds Transfer Payment Methods (FEB 1996)

Payments under this cooperative agreement will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH)), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Grant Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Recipient is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

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

[End of Provision]

§ 1274.932 Retention and Examination of Records.

Retention and Examination of Records (FEB 1996)

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this cooperative agreement shall be retained for a period of 3 years, except that records for nonexpendable property acquired with cooperative agreement funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All requirements of this provision shall apply to any subcontractor performing substantive work under this cooperative agreement.

[End of provisions]

Appendix A to Part 1274—Contract Provisions

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

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with Executive Order 11246, 30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p. 339, Executive Order 11375, 32 FR 14199, 3 CFR, 1966–1970 Comp., p. 684, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts in excess of \$50,000 for construction or repair awarded by Recipients and subRecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Recipient or subRecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient shall report all suspected or reported violations to NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by Recipients in excess of \$2,000 for construction contracts and in excess of \$50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each Recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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

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

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

Appendix B to Part 1274—Reports

1. *Individual procurement action report* (NASA Form 507). The grant officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

2. *Inventory listings of equipment*. As provided in paragraph (g) of the provision in § 1274.923, an annual inventory listing of Government furnished equipment will be submitted by October 31 of each year. Upon receipt of each annual inventory listing, the administrative grant officer will provide 1 copy to the NASA installation financial management officer and 1 copy to the NASA installation industrial property officer. A final inventory report of Government furnished equipment and grantee acquired equipment is due 60 days after the end of the cooperative agreement, in accordance with the provision in 31274.923. Upon receipt of the final inventory report, the administrative grant officer will provide 1 copy to the technical officer and 1 copy to the NASA Installation industrial property officer.

3. *Disclosure of lobbying activities* (SF LLL). (a) Grant officers shall provide one copy

of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

Appendix C to Part 1274—Listing of Exhibits

Exhibit A—Format for cooperative agreement

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
COOPERATIVE AGREEMENT

1. TO: 2. COOPERATIVE AGREEMENT NO.:
3. SUPPLEMENT NO.:
4. EFFECTIVE DATE:
5. EXPIRATION DATE:

6. FOR RESEARCH ENTITLED:

7. AWARD HISTORY	FUNDING HISTORY
PREVIOUS AMOUNT:	PREVIOUS OBLIGATION:
THIS ACTION:	THIS ACTION:
TOTAL TO DATE:	TOTAL TO DATE:

8. NASA PROCUREMENT REQUEST NO.:
PPC CODE.: APPROPRIATION:

9. POINTS OF CONTACT:

TECHNICAL OFFICER:

GRANT ADMINISTRATOR:

PAYMENT:

10. This cooperative agreement is awarded under the authority of 42 U.S.C. 2473(c)(5), and is subject to all applicable laws and regulations of the United States in effect on the date this cooperative agreement is awarded, including but not limited to 14 CFR Part 1274 (Cooperative Agreements with Commercial Firms).

UNITED STATES OF AMERICA

Recipient

XXXX XXXXXXXXXXXX
GRANTS OFFICER

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
AUTHORIZED REPRESENTATIVE

DATE: _____

DATE: _____

Enclosures
(As Required)