* * * *Effective February 28, 1983*

Ardmore, OK—Downtown Ardmore, NDB Rwy 35, Amdt. 3

4. By amending Part 97.29 ILS–MIS SIAPs identified as follows:

* * * *Effective April 28, 1983*

Sacramento, CA—Sacramento Executive, ILS Rwy 2, Amdt. 21
Atlanta, GA—The William B Hartsfield Atlanta INTL, ILS Rwy 9L, Amdt. 3
Atlanta, GA—The William B Hartsfield Atlanta INTL, ILS Rwy 27R, Amdt. 1
Peoria, IL—Greater Peoria, ILS Rwy 12, Amdt. 2
Peoria, IL—Greater Peoria, ILS Rwy 30, Amdt. 2
Portland, ME—Portland Intl Jetport, ILS Rwy 11, Amdt. 18
Westfield, MA—Barnes Muni, ILS Rwy 20, Amdt. 3
Binghamton, NY—Edwin A. Link Field-Broome County, ILS Rwy 16 Amdt. 1
Binghamton, NY—Edwin A. Link Field-Broome County, ILS Rwy 34, Amdt. 19
Elmira, NY—Chemung County, ILS Rwy 24, Amdt. 13
Bismarck, ND—Bismarck Muni, ILS Rwy 13, Amdt. 1
LaCrosse, WI—LaCrosse Muni, ILS Rwy 18, Amdt. 11

* * * *Effective April 14, 1983*

Mansfield, OH—Mansfield Lahm Muni, ILS Rwy 32, Amdt. 11

* * * *Effective March 3, 1983*

Washington, DC—Dulles Int., ILS Rwy 19R, Amdt. 17

5. By amending Part 97.31 RADAR SIAPs identified as follows:

* * * *Effective April 28, 1983*

Sarasota (Bradenton), FL—Sarasota-Bradenton, RADAR-1, Amdt. 3
Peoria, IL—Greater Peoria, RADAR-1, Amdt. 9
Binghamton, NY—Edwin A. Link Field-Broome County, RADAR-1, Amdt. 6

* * * *Effective March 3, 1983*

Washington, DC—Dulles Intl, RADAR–1, Amdt. 11

5. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective April 28, 1983*

Mobile, AL—Bates Field, RNAV Rwy 9, original
Peoria, IL—Greater Peoria, RNAV Rwy 4, Amdt. 4
Peoria, IL—Greater Peoria, RNAV Rwy 22, Amdt. 5
Ann Arbor, MI—Ann Arbor Muni, RNAV Rwy 24, Amdt. 3
Binghamton, NY—Edwin A. Link Field-Broome County, RNAV Rwy 10, Amdt. 1, cancelled
Binghamton, NY—Edwin A. Link Field-Broome County, RNAV Rwy 16, Amdt. 1, cancelled
Binghamton, NY—Edwin A. Link Field-Broome County, RNAV Rwy 28, Amdt. 1, cancelled

* * * *Effective April 14, 1983*

Mansfield, OH—Mansfield Lahm Muni, RNAV Rwy 23, Amdt. 4

* * * *Effective March 3, 1983*

Washington, D.C.—Dulles Intl, RNAV Rwy 19R, Amdt. 6
White Plains, NY—Westchester County, RNAV Rwy 34, Amdt. 3

* * * *Effective February 28, 1983*

Ardmore, OK—Downtown Ardmore, RNAV Rwy 17, Amdt. 2
Ardmore, OK—Downtown Ardmore, RNAV Rwy 35, Amdt. 2

* * * *Effective February 24, 1983*

Oklahoma City, OK—Clarence E. Page Muni, RNAV Rwy 17, Amdt. 2
Oklahoma City, OK—Clarence E. Page Muni, RNAV Rwy 35, Amdt. 2

**Note.**—The FAA published an amendment in Docket No. 23549, Amdt. No. 1237 to Part 97 of the Federal Aviation Regulations (Vol 48 FR No. 45 Page 9519; Dated March 7, 1983) Under Section 97.33 Effective April 14, 1983, Which is Hereby Amended as Follows:

Joliet, IL—Joliet Park District, RNAV Rwy 12, Amdt. 10
Cadillac, MI—Wexford County, RNAV Rwy 7, Amdt. 3
Cadillac, MI—Wexford County, RNAV Rwy 25, Amdt. 2
St. Louis, MO—Lambert-St. Louis Intl, RNAV Rwy 6, original
Pittsburgh, PA—Greater Pittsburgh Intl, RNAV Rwy 14, Amdt. 4, cancelled

Procedures Shall Be Removed From This § 97.33 Radar and Added To § 97.33 RNAV With Same Effective Date of April 14, 1983.

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

**Note.**—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on March 11, 1983.

**John M. Howard,**

*Manager, Aircraft Programs Division.*

**Note.**—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

[FR Doc. 83-7240 Filed 3-18-83; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

### Federal Old-Age, Survivors, and Disability Insurance; Computing Primary Insurance Amounts; Correction

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules; correction.

**SUMMARY:** This document corrects the example which follows § 404.211(e)(4) in the final rules which were published on July 15, 1982 (47 FR 30731). In the example as published, we erroneously dropped out, under the "child care dropout" provision, years in which the worker had earnings. As provided in § 215(b)(2)(A) of the Social Security Act, "child care dropout" years can be only years of no earnings.

**FOR FURTHER INFORMATION CONTACT:** Jack Schanberger, Room 3–B–4, Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301)594–6785.

Dated: March 15, 1983.

**Robert F. Sermier,**

*Deputy Assistant Secretary for Management Analysis and Systems.*

## PART 404—[AMENDED]

Accordingly, the Social Security Administration is correcting the example which follows 20 CFR 404.211(e)(4) by revising the last sentence in the first paragraph, by revising the last sentence of the second paragraph, and by adding a sentence to the second paragraph, so that the example as corrected reads as follows:

**§ 404.211 Computing your average indexed monthly earnings.**

* * * * *

(e) * * *
(4) * * *

*Example.* Ms. M., born August 4, 1953, became entitled to disability insurance benefits (DIB) beginning in July 1980 based on a disability which began January 15, 1980. In computing the DIB, we determined that the elapsed years are 1975 through 1979, the number of dropout years is 1 (5 elapsed years divided by 5), and the number of computation years is 4. Since Ms. M. had no earnings in 1975 and 1976, we drop out 1975 and use her earnings for the years 1977 through 1979.

Ms. M. lived with her child, who was born in 1972, in all months of 1973 and 1974 and did not have any earnings in those years. We, therefore, recompute Ms. M.'s DIB beginning with July 1981 to give her the advantage of the child care dropout. To do this, we reduce

the 4 computation years by 1 child care year to get 3 computation years. Because the child care dropout cannot be applied to computation years in which the worker had earnings, we can drop only one of Ms. M.'s computation years, i.e., 1976, in addition to the year 1975 which we dropped in the initial computation.

* * * * *

[FR Doc. 83-7298 Filed 3-18-83; 8:45 am]
BILLING CODE 4190-11-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD7-82-10]

### Amendment to Security Zone—Kennedy Space Center, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts the interim final rule amending the Coast Guard's Security Zone regulations for Kennedy Space Center, Florida by moving the boundary line from the NASA Causeway East (Orsino Causeway) to a line in the Banana River one-quarter mile south of the causeway. Interested persons were invited to comment on the interim rule. No comments were received and no changes to the interim rule have been made. This change in the security zone boundary is made to allow the Coast Guard adequate time to respond to possible intrusions of the security zone.

**EFFECTIVE DATE:** March 21, 1983.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Robert Buford, Commander (m), Seventh Coast Guard District, 51 S.W. First Avenue, Miami, FL, 33130; (305)-350-5651.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published an interim rule with request for comments in the October 25, 1982 issue of the **Federal Register** (47 FR 47241). No public hearing was held on the interim rule which was effective on October 25, 1982.

*Drafting Information:* The principal persons involved in drafting this notice are Lieutenant Robert Buford, Project Officer, Marine Safety Division, Seventh Coast Guard District and Lieutenant Michael T. Harris, Project Attorney, Legal Officer, Seventh Coast Guard District.

*Discussion of Final Rule:* This change in the security zone boundary is made to allow the Coast Guard adequate time to respond to possible intrusions of the security zone.

These regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.05 of May 22, 1980). An economic evaluation of the proposal has not been conducted since their impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. These regulations have been reviewed in accordance with Executive Order 12291 on Federal Regulation and have been determined not to be major rules under terms of that order.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation, Security measures, Vessels, and Waterways.

In consideration of the foregoing, § 165.701 of Title 33, Code of Federal Regulations is amended by replacing the text:

**§ 165.701 Amended**

* * * "Intracoastal Waterway to NASA Causeway East (Orsino Causeway), thence Westerly along the Southern shoreline of NASA Causeway East to the shoreline on Merritt Island at position 28-31.2N, 80-37.4W." * * *

with the text:

* * * "Intracoastal Waterway to daymarker '35' thence North Westerly one quarter of a mile south of NASA Causeway East (Orsino Causeway) to the shoreline on Merritt Island at position 28-30.95N, 80-37.6W." * * *

(c. 30, Sec. 1, 40 Stat. 220, as amended (50 U.S.C. 191); E.O. 10173; 33 CFR 6.04-6; 49 CFR 1.46(b))

Dated: December 22, 1983.

**D. C. Thompson,**

*District Commander, Seventh Coast Guard District.*

[FR Doc. 83-7125 Filed 3-18-83; 8:45 am]
BILLING CODE 4910-14-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 41 CFR Ch. 18

**[Procurement Regulation Directive 82-4 (dated August 16, 1982)]**

### Procurement Regulations; Miscellaneous Amendments

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82-4 concerning the following:

1. Charter of Aircraft.
2. Safety and Health.
3. Lobbying Cost.

**EFFECTIVE DATE:** March 21, 1983.

**FOR FURTHER INFORMATION CONTACT:** James H. Wilson, Procurement Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, D.C. 20546, Telephone: 202-755-2237.

**SUPPLEMENTARY INFORMATION:**

1. In Part 1, § 1.1350 is amended to cite the current NASA Management Instruction that is applicable to this subject.

2. In Part 1, Subpart 52 is revised to strengthen and emphasize the responsibility of affected NASA officials and to increase the effectiveness of NASA contractors in safety and health matters by revision to the Safety and Health clause. This revision also updates certain technical aspects of working environments and materials. Needed editorial changes are also made.

3. In Part 15, § 15.205-51, Lobbying Costs, is amended by the addition of language in paragraph (c) to clarify when communications considered lobbying are allowable.

### List of Subjects in 41 CFR Ch. 18

Government procurement.

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

**S. J. Evans,**

*Assistant Administrator for Procurement.*

## PART 1—GENERAL PROVISIONS

1. In Part 1, Table of Contents, the page numbers for paragraphs 1.5203 and 1.5204 are amended to read as follows:

* * * * *

Sec.
1.5203 Hazardous Materials and Operations ..... 1-52.3
1.5204 Contract Provisions ..... 1-52.3

2. In Part 1, § 1.1350 is revised to read as follows:

**§ 1.1350 Chapter of Aircraft.**

See NASA Management Instruction 7910.1, "NASA Aircraft Management."

3. In Part 1, §§ 1.5200 through 1.5204 are revised to read as follows:

### Subpart 52—Safety and Health

**§ 1.5200 Scope of Subpart.**

This Subpart sets forth NASA's safety and health policy, responsibility, and requirements relating to its contractors.

**§ 1.5201 Policy.**

It is NASA policy that contractors and subcontractors will perform in a safety and health conscious environment which, within the limits of controllable hazards, will:

(i) protect the life, health, and physical well-being of NASA and contractor employees during their work on NASA programs;

(ii) assure proper protection of the public from hazards incident to operations of NASA contractors and subcontractors;

(iii) avoid accidental work interruptions which could delay NASA programs;

(iv) prevent contamination and damage to or loss of property, supplies and equipment;

(v) provide data whereby risks and loss factors in space technology related to NASA programs can be accumulated and evaluated; and

(vi) comply with applicable regulation, standards and guides.

**§ 1.5202 Responsibility.**

(a) *Originators of Procurement Requests.* Originators of procurement requests will ensure, in accordance with installation safety and health screening criteria, that procurement requests affected by considerations of safety or health are processed through the appropriate installation safety and health officials or other designated responsible officials for: (i) Determining if hazards are involved in the procurement; (ii) formulating or selecting specific safety and health provisions applicable to the procurement in accordance with 1.351 "Procurement of Potentially Hazardous Items" or Part 14, Subpart 6; and (iii) determining to what extent a contractor safety and health plan will be required.

(b) *Installation safety Officials, Occupational Health Officials, or Other Designated Responsible Officials.* The appropriate installation safety and health officials, within their respective areas of responsibility, will advise and assist the contracting officer in:

(i) evaluating prospective contractors' safety and health programs;

(ii) determining to what extent safety and health provisions, if any, should be included in a proposed procurement;

(iii) assigning the specific safety and environmental health provisions to be included in a contract Schedule;

(iv) determining, in coordination with the cognizant program or project manager, the need for and the adequacy of contractors' safety and health plans;

(v) Assigning the specific occupational medicine provisions to be included in a contact Schedule;

(vi) determining the extent and form of accident or incident reports, required of contractors in compliance with the Federal Reports Act of 1942, and NASA reporting requirement;

(vii) requesting inspections of NASA Contractors by representatives of the Occupational Safety and Health Administration (OSHA) when appropriate; and

(viii) reviewing contractor hazardous operations procedures and certification requirements.

(c) *Headquarters Operational Health Official.* At installations where medical and environmental health officers or other designated responsible officials are not available to assist with the formulation of occupational medicine and environmental health provisions of a contract, the Chief, NASA Occupational Health Office, will assume this responsibility.

(d) *Contracting Officer.*

(1) *Safety and Health.* The contracting officer will obtain advice, assistance, recommendations, and applicable requirements from the appropriate safety, and health officials prior to the issuance of an invitation for bid or request for proposal in the following procurements:

(i) construction, modification, and demolition of facilities on Government installations;

(ii) manufacture of aerospace systems, including such items as power units, energy systems, boosters, engines, liquid and solid fuels, oxidizers, and/or propellants;

(iii) transportation of fuels, oxidizers, hazardous chemicals, and other hazardous or regulated materials;

(iv) research, development or test of engines, related components and propellants which involve hazardous operations or the use of hazardous or regulated materials;

(v) services on Government installations which involve hazardous operations or the use of hazardous or regulated materials;

(vi) operations which involve the use of or exposure to, potential health hazards (asbestos, polychlorinated biphenyls (PCB's) etc.), confined space entries, use of hazardous materials, or potential contamination of property, and pollution of air, water, vegetation, and soil;

(vii) activities which may (by either direct or secondary effect) adversely effect the work environment due to the use of ionizing radiation, microwaves, noise, lasers, ultraviolet, and infrared sources;

(viii) operations which necessitate exposures in neutral buoyancy or hyperbaric chambers and operations related thereto.

(2) Before issuing a stop-work order under paragraph (d)(2) of the "Safety and Health" clause, prior coordination will be effected with the safety and health officials and with the cognizant program or project manager.

**§ 1.5203 Hazardous Materials and Operations.**

(a) Hazardous Materials.

Hazardous material is defined by law as "a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce" (49 U.S.C. 1801). The Secretary of Transportation has developed a list of materials that are hazardous and may be found listed in 49 CFR 172.101. Typical hazardous materials are those that may be highly reactive, poisonous, explosive, flammable, combustible, corrosive radioactive; or those that may contaminate or pollute the environment or otherwise cause adverse health effects or unsafe conditions.

(b) Hazardous Operations.

Hazardous operations are those that involve the use of, or handling of, hazardous materials or involve the use of other materials, phenomena or elements at abnormal environmental or physical parameters that could result in personnel injury, illness or property damage if special precautions are not followed (e.g. high pressure gas operations in excess of 150 pounds per square inch gauge (psig), low pressure high volume gas operations, voltages above 550 volts, storage or handling of propellants or explosives, use of "heavy lift" material handling equipment, high or low temperature environments, environments with less than 19.5% or more than 25% oxygen by volume at normal atmospheric pressure, reduced gravity, radiation, excessive noise, etc.)

**§ 1.5204 Contract Provisions.**

(a) Specific system safety requirements which are to be included in the contract for the purpose of procuring system safety engineering services shall be defined in the contract Schedule in accordance with NASA PR Part 14, Subpart 6.

(b) Any unique facility safety or health requirements, which are in addition to the general provisions of the "Safety and Health" clause required herein, shall be prescribed as required by § 1.5202(b)(iii).

(c) The following clause shall be included in:

(i) all negotiated contracts of $1 million or more, unless the contracting officer makes a written determination in accordance with § 1.5202(b) that, under the circumstances of the procurement, the clause is not necessary;

(ii) all construction, repair, or alteration contracts in excess of $25,000;

(iii) all contracts having, within their total requirement, construction, repair or alteration tasks in excess of $25,000; and

(iv) any procurement regardless of dollar amount when: (A) the deliverable contract end items are of a hazardous nature; (B) during the life of the contract it can reasonably be expected that hazards will be generated within the operational environment, and the contracting officer determines that the hazards warrant the inclusion of the clause.

(d) This clause may, however, be excluded from any contract which is subject to either the Walsh-Healy Public Contracts Act (NASA PR Part 12 Subpart 6) or the Service Contract Act of 1965 (NASA PR Part 12 Subpart 10) and in which the application of either Act and any regulations thereunder constitute adequate safety and health protection. However, the clause should not be excluded without approval of the local safety and health officials.

**Safety and Health (August 1982)**

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the Schedule of the contract, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor shall comply with all applicable Federal, state and local laws, applicable to safety and health which are in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions as set forth in the Schedule of the contract.

(b) The Contractor shall take or cause to be taken such other safety and health measures as the Contracting Officer may direct. To the extent that the Contractor may be entitled to an equitable adjustment for such measures under the terms and conditions of this contract, such equitable adjustment shall be determined pursuant to the procedures of the clause of this contract entitled "Changes"; *provided* that no adjustment shall be made under this clause for any change for which an equitable adjustment is expressly provided under any other provision of this contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or his representative any accident, incident or exposure resulting in fatality, lost-time occupational injury, occupational disease, or contamination of property beyond any stated acceptable threshold limits set forth in the Schedule of the contract, or property loss of $25,000 or more arising out of work performed under this contract, *provided*, however, the Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. Service Contractors (excluding construction contracts) will provide quarterly reports which specify lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the Schedule of the contract. The Contractor will investigate all such work related incidents or accidents to the extent necessary to determine their cause or causes and furnish the Contracting Officer with a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d) Noncompliance with Provisions of this Safety and Health Clause.

(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with the provisions of this clause and may also specify corrective actions to be taken. The Contractor shall, promptly take, and report, any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with (d)(1) above, the Contracting Officer may invoke the provisions of the "Stop-Work" clause in this contract or any other remedy legally available to the Government in the event of such failure by the contractor.

(e) The Contractor (or subcontractor or supplier) shall cause the substance of this clause including this paragraph (e) and any applicable Schedule Provisions, with appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which: (i) amount to $1,000,000 or more unless the Contracting Officer makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of $25,000; or (iii) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) The Contractor agrees that authorized Government representatives of the Contracting Officer shall have access to and the right to examine, the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the contractor's safety plan (and health plan, where applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in Paragraphs (a) and (b) of this clause, and shall in addition furnish a list of other major or key operations required or planned in the performance of the contract although not deemed hazardous by the Contractor. NASA and the contractor will jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the contractor will develop and submit for NASA concurrence, *either or both* of the following as required by the Schedule of the contract or as may be required at the direction of the Contracting Officer.

(1) Written Hazardous Operating Procedures (HOP) for all hazardous operations, and/or

(2) A certification program for personnel involved in hazardous operations.

## PART 3—[AMENDED]

### § 3.106–4 [Amended]

4. In Part 3, § 3.106–4 is amended to change the reference "1.304.2" to read "1.304–2."

### § 3.809 [Amended]

In Part 3, § 3.809(c)(1)(ii) the reference "(see Part 51, Subpart 3)," is amended to read "(see Part 20, Subpart 6),".

### § 3.811 [Amended]

In Part 3, § 3.811(e), remove the word "and" that appears before "Contract Negotiation Memorandum."

## PART 7—CONTRACT CLAUSES

5. In Part 7, Table of Contents, the page numbers for paragraph § 7.203–13 and §§ 7.203–16 through 7.203–22 are amended to read as follows:

* * * * *


Sec.

7.203–13 [Reserved] ..... 7–2.8

* * * * *

7.203–16 Contract Work Hours Standards Act—Overtime Compensation ..... 7–2.8A

7.203–17 Walsh-Healey Public Contracts Act ..... 7–2.8A

7.203–18 Equal Opportunity ..... 7–2.8A

7.203–19 Officials Not To Benefit ..... 7–2.8A

7.203–20 Covenant Against Contingent Fees ..... 7–2.8A

7.203–21 Government Property ..... 7–2.8A

7.203–22 Insurance-Liability to Third Persons ..... 7–2.8A


* * * * *

## PART 15—CONTRACTS WITH COMMERCIAL ORGANIZATIONS

5. In Part 15, § 15.205–51(c) is revised to read as follows:

**§ 15.205–51 Lobbying cost.**

* * * * *

(c) Legislative liaison activities, such as attendance at committee hearings, gathering information regarding pending legislation, analysis of the effect of pending legislation, and the like are not lobbying and are allowable. In addition, communications to the Congress that would be considered lobbying in accordance with (a) above shall be allowable if they are performed in response to a written request from a congressional source.

## PART 16—PROCUREMENT FORMS

**§ 16.001 [Amended]**

6. In Part 16, § 16.001(a) is amended by changing "ITS–999" to read "ITA–999."

## PART 21—PROCUREMENT MANAGEMENT REPORTING SYSTEM

7. In Part 21, § 21.700 is revised to read as follows:

### Subpart 7—Report on College and University Projects

**§ 21.700 Committee on Academic Science and Engineering (C.A.S.E.) Report.**

The Committee on Academic Science and Engineering (C.A.S.E.) Report on Support of Colleges and Universities (NASA Form 1356) is designed to collect data (not appropriate for inclusion on Form 507) required for preparation of Government-wide reports on sponsored projects in universities. Information submitted with Form 1356 is used in conjunction with existing procurement and financial data to produce reports required by the National Science Foundation Act, the Office of Management and Budget, the Legislative Branch and private sector requestors. The preparation and utilization of NASA Form 1356 has been made an integral part of the NASA-University Program Information System (QUA–MIS) for recording all activity with colleges and universities, regardless of the nature of the obligating instrument (grant, contract, cooperative agreement, purchase order) or type of proposal (solicited or unsolicited). Preparation of the form is specified by NMI 5101.12. Detailed instructions for completion are on the form itself.

[FR Doc. 83-7243 Filed 3-18-83; 8:45 am]
BILLING CODE 7510-01-M

## 41 CFR Ch. 18

**[Procurement Regulation Directive 82–3 (dated June 25, 1982)]**

### Procurement Regulations; Miscellaneous Amendments

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82–3 concerning the following:

1. Subcontractor Kickbacks, and
2. Patent Rights.

**EFFECTIVE DATE:** March 21, 1983.

**FOR FURTHER INFORMATION CONTACT:** James H. Wilson, Procurement Policy Division (Code HP–1), Office of Procurement, NASA Headquarters, Washington, D.C. 20546, Telephone: 202–755–2237.

**SUPPLEMENTARY INFORMATION:**

1. In Part 1, § 1.111 is revised to bring it into closer alignment with the Defense Acquisition Regulation. By this revision the paragraph title is changed and new paragraph 1.111–3 is added which covers "Subcontractor Kickbacks."

2. Public Law 96–517, December 12, 1980, creates unique rights in inventions developed by small business firms or nonprofit organizations working under Government contracts where a purpose is to perform experimental, developmental and research work. Interim implementation of the Act was provided by Office of Management and Budget (OMB) Bulletin 81–22, Patents-Small Firms and Non-Profit Organizations. The Act and the Bulletin were applied to NASA contracts by Procurement Regulation Directive 81–5, July 1, 1981. For NASA grants, implementation was made by Instruction No. 1, July 1, 1981, of the NASA Grant and Cooperative Agreement Handbook.

On February 10, 1982, OMB issued Circular No. A–124 to provide definitive policies, procedures and guidelines with respect to inventions made by small business firms and nonprofit organizations, including universities, under funding agreements with Federal agencies where a purpose is to perform experimental, developmental or research work. The Circular superseded OMB Bulletin 81–22, effective March 1, 1982.

NASA provided partial implementation of the circular through issuance of procurement Notice No. 82–4, March 11, 1982, which contained a definitive Patent Rights clause for contracts. The notice also included a Patent Rights clause for use in grants and cooperative agreements, as well as a modification of the New Technology (July 1981) clause on April 20, 1982, a letter to all NASA Procurement Officers was used to distribute a single spaced version of the clauses.

With the exception of grants and cooperative agreements, this PRD completes the NASA Procurement Regulation coverage of Public Law 96–517 by setting forth policies and procedures consistent with OMB Circular A–124, as well as contract clauses. Policies and procedures for grants and cooperative agreements are not included in this PRD but will be issued in a future Grant Handbook Instruction. Pending issuance of that Instruction, grants personnel will continue to use the Patents Rights clause in Enclosure No. 2 of Procurement Notice No. 82–4. All other guidance in that notice is cancelled by issuance of this PRD.

**List of Subjects in 41 CFR Ch. 18**

Government procurement.

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

**S. J. Evans,**

*Assistant Administrator for Procurement.*

## PART 1—GENERAL PROVISIONS

1. In Part 1, Table of Contents, paragraphs 1.109–1 through 1.111–2 are amended and paragraph 1.111–3 is added to read as follows:

Sec.
1.109–2 Approval of Deviations.....1–1:4
1.109–3 Requests for Deviations.....1–1:4
1.109–50 Modification to Existing Contracts for New Procurement.....1–1:4
1.110 Reports of Purchases and Contracts.....1–1:4A
1.111 Reports of Noncompetitive Practices.....1–1:4A
1.111–1 (Reserved).....1–1:4A
1.111–2 Noncompetitive Practices.....1–1:4A
1.111–3 Subcontractor Kickbacks.....1–1:4B

2. In Part 1, the title for § 1.111 is revised and § 1.111–3 is added to read as follows:

**§ 1.111 Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.**

* * * * *

**§ 1.111–3 Subcontractor Kickbacks.**

The Anti-Kickback Act (41 U.S.C. 51) prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, commission, compensation, gift, or gratuity to the prime contractor or any

higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor, of any higher tier subcontractor, as an inducement or acknowledgment for the award of a subcontract or order. The Act further provides that the amount of any such fee, commission, or compensation, or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. It also creates a conclusive presumption that the cost of any such prohibited payment has been included in the price of the subcontract or order and ultimately borne by the Government. The Act provides for the recovery on behalf of the United States action, or by set-off of moneys otherwise owing to the subcontractor either by the United States directly or by the prime contractor. The Act imposes criminal penalties on any person who knowingly, makes or receives, directly or indirectly, any such prohibited payment.

## PART 3—PROCUREMENT BY NEGOTIATION

### § 3.501 [Amended]

3. In Part 3, § 3.501(b) Section C(8) is amended by changing the reference "3.102" at the end of the sentence to read "3.101."

## PART 9—PATENTS, DATA, AND COPYRIGHTS

4. In Part 9, the Table of Contents is amended by changing the page numbers for paragraphs 9.107 through 9.114 to read as follows:


9.107 Property Rights in Inventions Made in the Performance of Work Under NASA Contracts with Other Than Small Business Firms or Nonprofit Organizations....9-1:7
9.107-1 General....9-1:7
9.107-2 [Reserved]....9-1:8
9.107-3 Policy....9-1:8
9.107-4 Procedures....9-1:8B
9.107-5 New Technology Clause....9-1:8C
9.107-6 [Reserved]....9-1:12
9.107-7 Foreign Contracts....9-1:12
9.107-8 Patent Rights Under Product Improvement Programs or Independent Research and Development Programs....9-1:12
9.107-9 Procurement Using Funds Transferred to, or Received from, Another Government Agency....9-1:13
9.108 Patent Rights Under Funding Agreements with Small Business Firms or Nonprofit Organizations for the Performance of Experimental, Developmental, or Research Work....9-1:14
9.108-1 Introduction....9-1:14
9.108-2 Definitions....9-1:15
9.108-3 Policy....9-1:16
9.108-4 Procedures....9-1:16
9.108-5 Clause for Funding Agreements (Small Business Firms and Nonprofit Organization)....9-1:19
9.108-6 [Reserved]....9-1:25
9.108-7 Clause for Foreign Contracts....9-1:25
9.108-8 [Reserved]....9-1:26
9.108-9 Procurement: using Funds Transferred to, or Received from, Another Government Agency....9-1:26
9.108-10 Retention of Rights by Inventor....9-1:26
9.108-11 Government Assignment to Contractor of Rights in Invention of Government Employee....9-1:26
9.108-12 [Reserved]....9-1:26
9.108-13 [Reserved]....9-1:26
9.108-14 Licensing of Background Patent Rights to Third Parties....9-1:26
9.109 Administration of the New Technology and Patent Rights Clauses; Waiver of Rights to Inventions Under 42 U.S.C. 2457 and Election of Title under 35 U.S.C. 202....9-1:27
9.109-1 New Technology and Patent Rights Clauses Follow-Up; Designation of New Technology and Patent Representatives....9-1:27
9.109-2 Follow-Up by Contractor....9-1:29
9.109-3 Follow-Up by Government....9-1:29
9.109-4 Remedies....9-1:31
9.109-5 Conveyance of Invention Rights Acquired by the Government....9-1:31
9.109-6 Waiver of Rights to Inventions in Contracts Containing the New Technology Clause....9-1:31
9.109-7 Publication or Release of Invention Disclosures....9-1:35
9.109-8 Reporting on Utilization of Inventions [Reserved]....9-1:36
9.109-9 Exercise of March-in-Rights [Reserved]....9-1:36
9.109-10 Appeals [Reserved]....9-1:36
9.110 Payment of Royalties....9-1:36
9.111 and 9.112 [Reserved]....9-1:37
9.113 Proposal of Equivalent Merit....9-1:37
9.114 Facilities License....9-1:37


### § 9.107-5 [Amended]

5. In Part 9, § 9.107-5, the date of the clause "New Technology" is amended to read "(March 1982)" in place of "(July 1981)."

6. In Part 9, § 9.107-5 is amended by revising introductory text to paragraph (i) (2) of the "New Technology" clause to read as follows:

**§ 9.107-5 "New Technology" Clause.**

* * * * *

(i) *Subcontracts.*

(2) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include this "New Technology" clause modified to identify the parties in any subcontract hereunder with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the conduct of experimental, developmental, research, design, or engineering work. For subcontracts for experimental, developmental, or research work with a small business form or nonprofit organization the "Patent Rights (Small Business Firm and Nonprofit Organization)" clause suitably modified, shall be used. In the event of refusal by a subcontractor to accept either clause, as applicable, the Contractor:

* * * * *

7. In Part 9, § 9.107-7, the last sentence is revised to read as follows:

**§ 9.107-7 Foreign Contracts.** * * *

The clause in § 9.107-5 may not be appropriate, and a substitute or modified clause may be used after consultation with the installation patent counsel to meet the requirements peculiar to the foreign procurement.

8. In Part 9, § 9.107-9 the first sentence is revised to read as follows:

**§ 9.107-9 Procurement Using Funds Transferred to, or Received from Another Government Agency.**

(a) Whenever NASA requests another Government agency to perform work of the type specified in either § 9.107-4(a)(1) or § 9.108-4(a)(1), and unless special agreements relating to patent rights exist between NASA and such other agency, the contracting officer shall determine whether such agency contemplates contracting for such work or performing the work in-house. * * *

9. In Part 9, § 9.107-9(b) is revised to read as follows:

**§ 9.107-9 Procurement Using Funds Transferred to, or Received from, Another Government Agency.**

* * * * *

(b) Whenever another Government agency requests NASA to perform experimental, developmental, or research work and NASA contemplates contracting for all or part of such work the "New Technology" clause of 9.107-5 or the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108-5, whichever is applicable, may be used unless the other agency requests alterations thereto or a substitute clause. If alterations or a substitute clause are requested, the contracting officer shall consult with installation patent counsel as to the appropriateness of the use thereof. In some instances agreements will exist between NASA and another agency requiring special clauses and other provisions relating to patents and inventions to be included in any contract executed by NASA for or on behalf of the other agency. The

contracting officer shall refer to such agreements prior to initiating procurement action for any such contracts and shall consult with installation patent counsel with respect to any question concerning the appropriate clauses to use or the interpretation, implementation, or departure from the provisions or clauses set forth in such agreements. When the contract is with a small business firm or nonprofit organization, any exceptions made under 35 U.S.C. 202(a) and any documentation and reporting requirements required by 35 U.S.C. 202(b)(1), shall be the responsibility of the requesting agency unless otherwise provided in such agreement (see also 9.108–4(a)).

10. In Part 9, § 9.108 through 9.109–10 are revised to read as follows:

**§ 9.108 Patent Rights Under Funding Agreements with Small Business Firms or Nonprofit Organizations for the Performance of Experimental, Developmental, or Research Work.**

**§ 9.108–1 Introduction.**

(a) On December 12, 1980, Public Law 96–517 (35 U.S.C. 200 et seq.) was enacted governing the distribution of rights in inventions made by small business firms and domestic nonprofit organizations under funding agreements with Federal agencies.

(b) This Act takes precedence over any other Acts which would require a disposition of rights in subject inventions of small business firms or domestic nonprofit organizations in a manner inconsistent with the new Act. Additionally, the new Act will take precedence over any future Act unless the future Act cites the new Act and provides that it will take precedence. The provisions of the Act took effect on July 1, 1981, and will be applicable to all funding agreements with small business firms and domestic nonprofit organizations executed on or after that date.

(c) As to any subject inventions which are "made" on or after July 1, 1981, in the performance of funding agreements which were awarded prior to July 1, 1981, to small business firms or domestic nonprofit organizations, paragraph 1245–118 of the NASA Patent Waiver Regulations of July 1, 1981, (14 CFR 1245.1) may be applied.

**§ 9.108–2 Definitions.**

As used in this paragraph:

(a) The term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(b) The term "contractor" means any person, small business firm or domestic nonprofit organization that is a party to a funding agreement.

(c) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(d) The term "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement.

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

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

(g) The term "small business firm" means a small business concern as defined at Section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this Subpart, the size standard for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 121.3–12, respectively, will be used.

(h) The term "nonprofit organization" means universities and other institutions 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.

**§ 9.108–3 Policy.**

This paragraph 9.108 is intended to establish uniform and coordinated implementation of 35 U.S.C. 200–204 so as to foster the policy and objectives set forth in 35 U.S.C. 200.

**§ 9.108–4 Procedures.**

(a) *Use of the "Patent Rights (Small Business Firm or Nonprofit Organization)" Clause.*

(1) Each funding agreement awarded to a small business firm or domestic nonprofit organization which has as a purpose the performance of experimental, developmental or research work shall contain the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause set forth in 9.108–5, except that the funding agreement may contain alternate provisions:

(i) when the funding agreement is for the operation of a Government-owned research or production facility; or

(ii) in exceptional circumstances when it is determined by NASA that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 38 of Title 35 of the United States Code; or

(iii) when it is determined by a Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any Subject Invention is necessary to protect the security of such activities.

(2) Any determination under subparagraph (a)(1)(ii) of this paragraph will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will contain such information as NASA deems relevant and, at minimum, will (1) identify the small business firm or domestic nonprofit organization involved, (2) describe the extent to which NASA action restricted or eliminated the right to retain title to a subject invention, (3) state the facts and rationale supporting NASA action, (4) provide supporting documentation for those facts and rationale, and (5) indicate the nature of any objections to NASA action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts will be sent to the Comptroller General of the United States within thirty days after the award of the applicable funding agreement. In cases of determinations applicable to funding agreements with small business firms, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(3) To assist the Comptroller General to accomplish his or her responsibilities under 35 U.S.C. 202, the Assistant Administrator for Procurement shall accumulate and, at the request of the

Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime funding agreements entered into with small business firms or domestic nonprofit organizations that contain the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause set forth in 9.108–5 during each period of October 1 through September 30, beginning October 1, 1982.

(4) To qualify for the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108–5, the small business firm or domestic nonprofit organization may be required by the contracting officer to certify that it is either a small business firm or domestic nonprofit organization. If the contracting officer has reason to question the status of the prospective contractor as a small business firm or a domestic nonprofit organization, he or she may file a protest in accordance with 13 C.F.R. 121.3–5 if the small business firm status is questioned or require the prospective contractor to furnish evidence to establish its status as a domestic nonprofit organization.

(5) *Right to Sublicense Foreign Governments and International Organizations.* When the Administrator or duly authorized designee determines at the time of contracting with a small business firm or domestic nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, a sentence may be added at the end of paragraph (b) of the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause in 9.108–5 as follows:

*This license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements; or pursuant to any future treaties or agreements with foreign governments or international organizations.*

This language may be modified to be limited to specific treaties or agreements or otherwise specify a time when the Government's right to sublicense ends.

(b) *Minimum rights to contractor.*

(1) Paragraph (e) of the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108–5 specifies the minimum rights retained by the contractor in Subject Inventions. The contractor will retain a revocable, nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title except if the contractor fails to disclose the subject invention within the times specified in paragraph (c) of the aforementioned clause of 9.108–5. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of NASA except when transferred to the successor of that part of the contractor'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 the Subject Invention pursuant to an application for an exclusive license submitted in accordance with the NASA Patent Licensing Regulations (14 CFR 1245.2). This license will not be revoked in that field of use or the geographical areas in which the contractor 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 NASA to the extent the contractor, 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, NASA will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by NASA for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with the procedures set forth in the NASA Patent Licensing Regulations (14 CFR 1245.2), from any decision concerning the revocation or modification of its license.

(c) *Subcontracts.*

(1) Paragraph (g) of the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108–5 requires that the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause suitably modified to identify the parties, be included in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. For subcontracts, regardless of tier, with other than a small business firm or domestic nonprofit organization for the performance of experimental, developmental, research, design or engineering work the "New Technology" clause or other patent rights clause required by 9.107–4(b) is to be used.

(2) The Subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(3) As to all NASA contracts (and subcontracts) entered into prior to July 1, 1981, which contain either the "New Technology (Long Form)" clause then appearing in 9.107–5 or the "New Technology (Short Form)" clause of former paragraph 9.107–6, the contractor (or subcontractor) is authorized to flow-down the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108–5 as required by this subparagraph 9.108–4(c) in lieu of the requirements of the aforementioned "New Technology" clauses (subparagraphs (i) and (f), respectively) in all subcontracts executed after July 1, 1981, with a small business firm or domestic nonprofit organization. Also, as to any contract (or subcontract) entered into with a small business firm or domestic nonprofit organization on or after July 1, 1981, the contractor (or subcontractor) is authorized to substitute the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108–5 as required by this subparagraph 9.108–4(c) for any previous version of such clause.

**§ 9.108–5 Clause for Funding Agreements (Small Business Firms and Nonprofit Organizations).**

The following clause will be used in funding agreements with small business firms and domestic nonprofit organizations unless the funding agreement falls within one of the exceptions described in 9.108–4(a)(1).

**Patent Rights (Small Business Firm or Nonprofit Organization) (June 1982)**

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) "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.

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

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Public Law 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 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) "Nonprofit Orgainzation" 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.

(b) *Allocation of Principal Rights.* The contractor 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 Contractor retains title, the Federal Government shall have a non-exclusive, non-transferable, 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 Applications by Contractor.*

(1) The Contractor will disclose each Subject invention to NASA within two months after the inventor disclose it in writing to Contractor personnel responsible for patent matters. The disclosure to NASA 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 NASA, the Contractor will promptly notify NASA of the acceptance of any manuscript describing the invention for the publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying NASA within twelve months of disclosure to the Contractor; provided that 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 NASA to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after publication, on sale, or public use. The Contractor will file patent applications in additional countries within either ten 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 to NASA, election, and filing may, at the discretion of NASA be granted.

(d) *Conditions When the Government May Obtain Title.*

(1) The Contractor will convey to NASA, upon written request, title to any subject invention:

(i) If the Contractor fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title.

(ii) In those countries in which the Contractor fails to file patent applications within the time specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c), above, but prior to its receipt of the written request of NASA, the Contractor shall continue to retain title in that country.

(iii) In any country in which the Contractor 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 Contractor.*

(1) The Contractor will retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title except if the Contractor fails to disclose the Subject Invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contract was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Contractor'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 the Subject Invention pursuant to an application for an exclusive license submitted in accordance with application provisions in NASA's Patent Licensing Regulation, 14 CFR 1245.2. This license will not be revoked in that field of use or the geographical areas in which the Contractor 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 NASA to the extent the Contractor, 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, NASA will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such time as may be authorized by NASA for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with NASA Patent Licensing Regulation, 14 CFR 1245.2, any decision concerning the revocation or modification of its license.

(f) *Contractor Action to Protect the Government's Interest.*

(1) The Contractor 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 Contractor elects to retain title, and

(ii) convey title to NASA when requested under (d) above, and to

enable the Government to obtain patent protection throughout the world in that Subject Invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each Subject Invention made under contract in order that the Contractor can comply with the disclosure provisions of (c) above, 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 (c)(1) above. The Contractor shall instruct such employees through employee agreements of 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 Contractor will notify NASA of any decision 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 thirty days before the expiration of the response period required by the relevant patent office.

(4) The Contractor 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 contract) awarded by NASA. The Government has certain rights in this invention."

(5) The Contractor shall furnish the Contracting Officer:

(i) interim reports every twelve (12) months from the date of this contract, listing all Subject Inventions required to be disclosed during that period, or stating that there were no such Subject Inventions;

(ii) a final report prior to close out of the contract listing (A) all Subject Inventions or stating that there were none and (B) all subcontracts containing a patent rights clause or stating that there were none;

(iii) notification of all subcontracts for experimental, developmental, research, design or engineering work and identification of the patent rights clause (either the "New Technology" clause as required by NASA Procurement Regulation 9.107–4 or the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause as required by NASA Procurement Regulation 9.108–4), and a copy of the subcontract upon request;

(iv) upon request, the filing date, serial number, and title; a copy of the patent application (including an English translation when available); and a patent number and issue date for any Subject Invention in any country in which the Contractor has applied for patents.

(g) *Subcontracts.*

(1) The Contractor will include this clause, 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. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, research, design or engineering work the patent rights clause as required by NASA Procurement Regulation 9.107–4(b).

(3) In case of subcontracts, at any tier containing the clause required by (g)(1) above, when the prime award with NASA was a contract (but not a grant or cooperative agreement) containing this clause, NASA, the subcontractor and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(h) *Reporting on Utilization of Subject Inventions.* The Contractor 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 Contractor 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 Contractor, and such other data and information as NASA may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding undertaken by NASA in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, NASA agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that with respect to any Subject Invention in which it has acquired title, NASA has the right in accordance with the procedures established by the NASA Procurement Regulation which are consistent with OMB Circular A–124 to require the Contractor, an assignee or exclusive licensee of a Subject Invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the 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 Contractor, assignee, or their licensees;

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

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

(k) *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor 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 as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention provided that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor may not grant exclusive licenses under United States patents or patent applications in Subject Inventions to persons other than small business firms for a period in excess of the earlier of

(i) five years from first commercial sale or use of the invention; or

(ii) eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, NASA approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention.

(3) The Contractor will share any royalties collected on a Subject Invention with the inventor; and

(4) The balance of any royalties or income earned by the Contractor 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.

(l) *Communications.* NASA shall designate a New Technology Representative and a Patent Representative to be the central point of contact for administering this clause in accordance with the procedures of NASA Procurement Regulation 9.109–1. The Contractor shall include such designation in all subcontracts containing either this clause or the clause required by NASA Procurement Regulation 9.107–4(b).

**§ 9.108–6 [Reserved]**

**§ 9.108–7 Clause for Foreign Contracts.**

A patent rights clause is to be included in every contract with a non-domestic firm or organization for the performance of experimental, developmental, or research work. The clause of 9.108–5 is limited to small business firms and domestic nonprofit organizations; and the regulations of the Small Business Administration exclude foreign businesses from being considered as small business firms. Therefore, Patent Counsel should be consulted for appropriate clauses to be used when the contractor is a non-domestic firm or organization or the work is to be performed outside the United States (see also 9.107–7)

**§ 9.108–8 [Reserved]**

**§ 9.108–9 Procurement Using Funds Transferred to, or Received from, Another Government Agency.**

The policy, procedures and instructions set forth in 9.107–9 apply, as appropriate, to funding agreements with small business firms and domestic nonprofit organizations.

**§ 9.108–10 Retention of Rights by Inventor.**

In contracts with small business firms or domestic nonprofit organizations, if the contractor does not elect to retain title to a Subject Invention, NASA may consider and, after consultation with the contractor, may grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to those conditions that apply to a small business firm.

**§ 9.108–11 Government Assignment to Contractor of Rights in Invention of Government Employee.**

In any case when a NASA employee is a coinventor of any invention made under a funding agreement with a small business firm or domestic nonprofit organization, and when NASA transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 350.S.C.202(e), the assignment will be made subject to the same conditions as would apply to the contractor under the clause of 9.108–5.

**§§ 9.108–12 and 9.108–13 [Reserved]**

**§ 9.108–14 Licensing of Background Patent Rights to Third Parties.**

(a) A funding agreement with a small business firm or domestic nonprofit organization will not contain a provision allowing NASA to require the licensing to third parties of inventions owned by the contractor that are not Subject Inventions unless such provision has been approved by the Administrator and a written justification has been signed by the Administrator. Any such provision will clearly state whether the licensing may be required in connection with the practice of a Subject Invention, a specifically identified work object, or both. The Administrator may not delegate the authority to approve such provisions or to sign justifications required for such provisions.

(b) NASA will not require the licensing of third parties under any such provision unless the Administrator determines that the use of the invention by others is necessary for the practice of a Subject Invention or for the use of a work object of the funding agreement and that such action is necessary to achieve the practical application of the Subject Invention or work object. Any such determination will be on the record after an opportunity for a NASA hearing. Any action commenced for judicial review of such determination will be brought within sixty days after notification to the contractor of such determination.

**§ 9.109 Administration of the New Technology and Patent Rights Clauses; Waiver of Rights to Inventions Under 42 U.S.C. 2457 and Election of Title Under 35 U.S.C. 202.**

**§ 9.109–1 New Technology and Patent Rights Clauses Follow-Up; Designation of New Technology and Patent Representatives.**

(a) It is important that the Government and the contractor know, protect, and exercise their rights in any inventions, discoveries, improvements or innovations made in the performance of work under contracts of NASA in order to ensure their expeditious availability to the public, to enable the Government, the contractor, and the public to avoid unnecessary payment of royalties, and to defend themselves against claims and suits for infringement. To attain these ends, contracts having the "New Technology" clause of 9.107–5, the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108–5, or other patent rights clause (hereinafter referred to as "the clause" unless otherwise indicated) should be so administered that:

(1) Reportable Items and Subject Inventions, as defined in the clause, are identified, disclosed, reported and election made, as required by the clause;

(2) The rights to the Government in such Reportable Items and Subject Inventions are established;

(3) When appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights in patent applications and any resulting patents are documented by formal instruments such as confirmatory licenses or assignments; and

(5) Expeditious commercial utilization of such Reportable Items or Subject Inventions is achieved.

(b)(1) For each contract containing the clause the contracting officer shall designate representatives (hereinafter referred to as the "New Technology Representative" and the "Patent Representative") to administer the clause, protect the Government's rights, and take other actions in relation thereto. The respective responsibilities and authorities of these representatives in administering the clause, are set forth in 9.109–3. Designation of these representatives shall be accomplished by incorporation of a provision into the contract Schedule containing the following or similar statements:

*Designation of New Technology Representative and Patent Representative*

(a) For purposes of administration of the clause of this contact entitled "New Technology" or "Patent Rights (Small Business Firm or Nonprofit Organization)" clause, whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

| Title | Office code | Address (including Zip Code) |
|---|---|---|
| New Technology Representative | | |
| Patent Representative | | |

(b) Reports of Reportable Items, and disclosure of Subject Inventions, interim reports, final reports, utilization reports, and other reports required by the 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 provision shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights (Small Business Firm on Nonprofit Organization)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives is set forth in 9.109–3 of the NASA Procurement Regulation.

(2) The New Technology Representative shall be the Technology Utilization Officer or the staff member (by titled position) having cognizance of technology utilization matters for the NASA installation concerned; and the Patent Representative shall be the Patent Counsel or the staff member (by titled position) having cognizance of patent matters for the NASA installation concerned.

(3) The contracting officer shall:

(i) Furnish the New Technology Representative a copy of each contract (and modifications thereto) containing the clause, copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the New Technology Representative indicates otherwise.

(ii) Notify the New Technology Representative of the organizational element of the NASA installation having technical cognizance of the contract; and

(iii) Furnish the Patent Representative a copy of each contract (and modifications thereto) containing the clause, copies of the final technical report, interim progress reports, and other pertinent material provided under the contract, unless the Patent Representative indicates otherwise.

(4) The New Technology Representative and the Patent Representative shall maintain complete files of correspondence and other actions involving their respective administration of the clause. Copies of documents which are appropriate for inclusion in the general contract files shall be furnished to the contracting officer.

**§ 9.109–2 Follow-Up by Contractor.**

(a) Each contractor other than a small business firm or domestic nonprofit organization is required to establish and maintain effective procedures to ensure that Reportable Items made in the performance of work under contracts of NASA are identified, reported, and when appropriate, patent applications filed, and that the Government's rights therein are established and protected. Each contractor that is a small business firm or a domestic nonprofit organization *should* establish and maintain effective procedures to ensure that inventions made under the contract are identified, disclosed, election of rights made and when appropriate, patent applications filed, and that the Government's rights therein are established and protected.

(b) When it is determined after the award of a contract that the contractor or a subcontractor may not have a clear understanding of the rights and obligations of the parties under the clause, a post-award orientation conference or letter may be used to explain these rights and obligations. When reviewing a contractor's procedures, particular attention is to be given to ascertaining their effectiveness for identifying, reporting, and disclosing Reportable Items and Subject Inventions as required by the clause.

(c) During the period of performance of each contract or subcontract the contractor or subcontractor is to submit to the New Technology Representative (or any other representative designated by the contracting officer) all reports of Reportable Items, disclosure of Subject Inventions, interim reports, subcontract identification, and other information in the manner required by the clause; and upon the completion of the work under the contract or subcontract the final report if required by the clause.

(d) Reporting of Reportable Items required by the "New Technology" clause promptly and before the completion of contract work, and the prompt submission of the final report upon completion of contract work, will aid New Technology clearance. Timely submission of annual interim reports, where contracts cover a period of more than one year, will also facilitate clause administration and expedite final clearance.

**§ 9.109–3 Follow-Up by Government.**

In order to ensure compliance by the contractor with the obligations of the clause:

(a) The New Technology Representative shall review, as necessary, the technical progress of work performed under the contract to ascertain whether the contractor and his subcontractors, where appropriate, are complying with the reporting requirements of the clause. This effort should be directed primarily toward contracts and subcontracts which, by the nature of the experimental, developmental, research, or other work to be performed, or the dollar amounts involved, are likely to produce Reportable Items or Subject Inventions of significant quantity or quality, or toward contracts and subcontracts where there is reason to believe the contractors may not be complying with their contractual obligations. Other contracts and subcontracts should be

spot-checked when feasible. These follow-up activities may include:

(1) Reviewing technical reports submitted by the contractor;

(2) Requesting the Patent Representative to check sources for patents issued to the contractor in fields related to his Government contracts;

(3) Interviewing contractor personnel regarding work under the contract, observing the work on-site, and inspecting laboratory notebooks and other records of the contractor related to work under the contract where so authorized by the clause;

(4) Interviewing agency technical personnel concerning novel developments in contracts under their cognizance; and

(5) Ensuring that the contractor is timely in submitting the reports of Reportable Items and disclosure of Subject Inventions, interim reports, subcontract identification, and final reports as required by the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports of Reportable Items and disclosure of Subject Inventions, and a copy of the written statement, if any, submitted with the report of the Reportable Item. The New Technology Representative shall consult with the Patent Representative whenever a question arises as to whether a given Reportable Item is to be considered a Subject Invention or whether it was made in the performance of work under the contract. All correspondence relating to inventions and waivers under the "New Technology" clause, and election of title under the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause will also be promptly forwarded to the Patent Representative.

(c) The Patent Representative shall review each Reportable Item to ascertain whether it is to be considered a Subject Invention, obtain any determinations required by paragraph (b) of the "New Technology" clause, and so notify the contractor. As to any Subject Invention, the Patent Representative shall ensure that the contractor has provided sufficient information to protect the Government's rights and interests therein, including, as required, information and documents necessary for the preparation, filing, and prosecution of patent applications, determinations of inventorship, and the preparation of instruments establishing the Government's rights therein. The Patent Representative shall also, as necessary, conduct selected reviews of the nature set forth in paragraph (a), above, to ensure that Subject Inventions are identified, adequately documented, and timely reported or disclosed.

(d) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, the New Technology Representative shall determine whether the contractor has complied with the reporting requirements of the clause. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence with such certification, and forward the certification to the contracting officer. Such determinations generally will require consultation with cognizant technical personnel.

(e) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (h) of the "New Technology" clause. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractors books, records and other documents in accordance with paragraph (g) of the "New Technology" clause. However, no action shall be taken by either the New Technology Representative or the Patent Representative which would constitute a final decision under the Disputes clause or involve a change or an increase in the work required to be performed under the contract which is inconsistent with 9.109-10 or which otherwise is outside the scope of obligations imposed upon the contractor by the contract.

(f) Release of final payment under the contract, and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor, shall not be approved by the contracting officer until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence therewith, as specified in paragraph (d), above.

**§ 9.109-4 Remedies.**

If the contractor, for a contract containing the New Technology clause of 9.107-5, fails to establish, maintain, or follow effective procedures for identifying and disclosing Reportable Items or other reports and information or fails to correct any deficiency after notice thereof, the contracting officer may require the contractor to make available for examination, books, records, and documents relating to inventions, discoveries, improvements, or innovations in the same field of technology as the contract to enable a determination of whether there are such Reportable Items, and may invoke the withholding provisions of the clause. Further, the contracting officer may invoke the withholding provisions of the clause if the contractor fails to report any Reportable Item as required by the clause.

**§ 9.109-5 Conveyance of Invention Rights Acquired by the Government.**

(a) Where the Government acquires the entire right, title, and interest in an invention under the "New Technology" clause of 9.107-5, a determination of title is to be made in accordance with 42 U.S.C. 2457 and reflected in appropriate instruments executed by NASA and forwarded to the contractor. When the Government acquires the entire right, title and interest in an invention under the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause of 9.108-5, assignments are required from the inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor, to establish clearly the chain of title from the inventor to the Government. The form of conveyance of title from the inventor to the contractor must be legally sufficient to convey the rights the contractor is required to convey to the Government.

(b) When the contractor is granted a waiver under the "New Technology" clause (see 9.109-6), or elects to retain title under the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause and, in either case, timely files a patent application on the invention, an instrument confirmatory of the Government's license rights and other rights is to be obtained.

(c) Assignments, licenses, confirmatory instruments, and other papers evidencing any rights of the Government in patents or patent applications shall be recorded in the Statutory Register or documented in the Governmental Register maintained by the U.S. Patent and Trademark Office pursuant to Executive Order 9424, February 18, 1944.

**§ 9.109-6 Waiver of Rights to Inventions in Contracts Containing the "New Technology" Clause.**

(a) Pursuant to the NASA Patent Waiver Regulations, 14 CR Section 1245, Subpart 1, the Administrator may, in appropriate cases in contracts or

subcontracts with other than a small business firm or a domestic nonprofit organization, grant a request for the waiver of rights to any or all inventions made or which may be made under such contract or subcontract. The conditions, reservations, and obligations of a waiver are set forth in the Waiver Regulations and will be included in the Instrument of Waiver.

(b) Under § 1245.104 of the Waiver Regulations, advance waiver of rights to any or all inventions which may be made under a contract may be requested prior to the execution of the contract, or within 30 days after execution of the contract by the contractor. Waiver of rights to an identified invention made and reported under a contract may be requested under 14 CFR 1245.105. Waiver of rights may be requested under any of these provisions even though a request under a different provision was not made, or if made, was not granted. Waiver of foreign rights under 14 CFR 1245.106 may be requested concurrently with domestic rights or independently thereof.

(c) A request for the waiver of invention rights is made in the form of a petition, the requirements of which are specified in 14 CFR 1245.110. Petitions for advance waiver of rights presented prior to contract execution must be submitted through the contracting officer to the Inventions and Contributions Board, National Aeronautics and Space Administration, Washington, D.C. 20546. All other petitions shall be submitted directly to this Board. Forms which may be used in petitioning for waiver of invention rights and other general information pertaining thereto may be obtained from the Board.

(d) Subcontractors and prospective subcontractors may petition for waiver of invention rights in the same manner as described in this Subpart for prime contractors. Petitions by subcontractors or prospective subcontractors may be submitted directly to the Board, except that when a petition is made prior to the execution of a contract, it must be submitted to the Board through the NASA contracting officer.

(e) Petitions for advance waiver of rights prior to execution of the contract submitted by organizations selected for negotiation of a contract and petitions for advance waiver of rights submitted by contractors within 30 days after execution of a contract, will be considered by the Board. Contracting officers should forward petitions submitted prior to execution of the contract to the installation Patent Counsel for processing; the Patent Counsel will then forward the petitions to the Board. If the Board finds that a petition submitted prior to execution of the contract qualified under the criteria set forth in § 1245.104 of the regulations, it will recommend to the Administrator that waiver be granted and shall inform the contracting officer of the Administrator's determination with respect thereto. Should the Board, in considering a petition for advance waiver of rights prior to the execution of the contract, determine that there is insufficient time or information or other reasons to permit it to make its findings and recommendations to the Administrator without unduly delaying execution of the contract, the Board, through the installation Patent Counsel, will inform the contracting officer of its action and request him to notify the petitioner. The contractor may, within 30 days following execution of a contract, request the Board to reconsider the petition, either on the record or with any additional information which the contractor may care to furnish in support of the original petition. Contractors that have submitted petitions within 30 days after contract execution will be notified directly by the Board of its findings and proposed recommendation.

(f) Petitions for advance waiver should include sufficient information to permit the Board to make the specific findings under § 1245.104(c) and (d) of the regulations. These findings relate to the purpose of the contract, the field of science or technology of the contract, the relative commercial versus Government funding in the identified field of science, the commercial position of the contractor relative to the contract work or, if the contractor has not established such a commercial position, other facts which may, nevertheless, qualify the contractor under the "special situations" provisions of the regulations. In addition, Section 1245.104(b) of these regulations permit the Board to recommend to the Administrator the grant of waiver in "exceptional circumstances" when the Board is unable to make some of the specific findings required by the regulations. In the event the petitioner seeks to qualify his advance waiver under the exceptional circumstances provision of the regulations, suffcient information should be submitted to adequately support this finding.

(g) Advance waiver of invention rights granted under § 1245.04 of the regulations shall apply to those inventions reported during the term of the applicable contract and upon which the contractor indicates that he has filed or intends to file an application for U.S. patent. The waiver shall extend to any division or continuation patent application provided the scope of the invention remains substantially the same as that of the reported invention. An advance waiver of rights shall also extend to any contract changes, modifications or supplemental agreements so along as the purpose of the contract or the scope of work to be performed is not substantially altered.

(h) When the "New Technology" clause of 9.107–5 is to be applicable to the procurement, the following provision will be included in the request for proposals:

**Waiver of Rights to Inventions (June 1982)**

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR Part 245, Subpart 1, waiver of rights to any or all inventions made or which 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. Under § 1245.104 of the regulations, advance waiver of rights to any or all inventions which 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 Contractor. Waiver of rights to an identified invention made and reported under a contract or subcontract may be requested under 14 CFR 1245.105, even though a request for an advance waiver was not made or, if made, was not granted.

(b) If a proposer intends to petition NASA for the waiver of invention rights prior to contract execution, the petition for waiver should be presented with the proposal. Forms which may be used in petitioning for waiver may be obtained from the NASA Inventions and Contributions Board, National Aeronautics and Space Administration, Washington, DC 20546. The findings which must be made by the Board in order to recommend that a waiver be granted are set forth in 14 CFR Section 1245, Subpart 1.

(c) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel 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 Contracting Officer of the

Administrator's determination. The Contracting 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 Contracting Officer. The petitioner may within 30 days following execution of the contract request the Board to reconsider the petition on the record or with any additional information he may care to furnish. 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.

(i) When NASA requests another Government agency to perform work, of a type defined in 9.107–4, on behalf of NASA and it is contemplated that a contract will be awarded, instructions for transmittal of petitions for waiver shall be provided to the other agency in accordance with 9.107–9(a)(6). The NASA Inventions and Contributions Board will consider any petitions and recommend to the Administrator whether or not waiver should be granted. The Administrator's determination will be transmitted to the contractor and the contracting officer of the other agency.

(j) The Board shall inform the installation Patent Counsel of the decision of the Administrator to either grant or deny advance waiver of patent rights. The installation Patent Counsel shall notify the contracting officer and the New Technology Representative of the Administrator's action.

**§ 9.109–7 Publication or Release of Invention Disclosures.**

(1) The publication of information disclosing an invention by any party before the filing of a patent application may create a bar to a valid patent. In recognition of this, 35 U.S.C. 205 provides

"Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office."

(2) NASA will, therefore, to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public reports or disclosures of Subject Inventions submitted pursuant to the clause of either 9.107–5 or 9.108–5 for a reasonable time in order for patent applications to be filed.

(3) NASA will also use reasonable efforts to withhold other information disclosing a Subject Invention that may be included in data delivered pursuant to contract requirements (see 9.200), *provided* that the contractor notifies NASA of the identity of the data and the Subject Inventions to which it relates at the time of delivery of the data. Such notification must be to both the contracting officer and the patent representative designated in the contract.

(4) With respect to small business firms or domestic nonprofit organizations, OMB Circular A–124 states that a reasonable time for withholding the report or disclosure of a Subject Invention under (2) above is that time during which an initial patent application may be filed pursuant to the clause of 9.108–5, and a reasonable time for withholding other information under (3) above is six months from delivery of the data with notification.

(5) It is NASA's general practice, if circumstances permit, to provide notice to the submitter prior to release of any unpublished information disclosing a Subject Invention pursuant to a request under the Freedom of Information Act.

**§ 9.109–8 Reporting on Utilization of Inventions. [Reserved]**

**§ 9.109–9 Exercise of March-In Rights. [Reserved]**

**§ 9.109–10 Appeals. [Reserved]**

**§ 16.802 [Amended]**

11. In Part 16, 16.802 is amended by removing "1.507 through".

[FR Doc. 83-7244 Filed 3-18-83; 8:45 am]
BILLING CODE 7510-01-M

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1612

### Restrictions on Certain Activities

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends § 1612.4 of the Legal Services Corporation regulations governing legislative and administrative representation. The amendments impose additional restrictions on legislative and administrative activities mandated by provisions of the continuing resolution appropriating FY 1983 funds for the Corporation, Pub. L. 97–377. The amendments also include changes in the language of the regulation to more closely conform it to the language of the Legal Services Corporation Act, and to provide for additional recipient documentation and reporting requirements including a provision applicable to recipient publications which address legislative measures.

**EFFECTIVE DATE:** April 20, 1983.

**FOR FURTHER INFORMATION CONTACT:** Alan R. Swendiman (202) 272–4010.

**SUPPLEMENTARY INFORMATION:** The Legal Services Corporation published proposed amendments to § 1612.4 on November 8, 1982, (47 FR 50660) and interested parties were given 30 days until December 8, 1982, to submit comments on the proposed amendments. The amendments were drafted, in part, to implement certain provisions of the continuing resolution enacted on October 2, 1982, which appropriated FY 1983 funds for the Corporation (Pub. L. 97–276). The Corporation gave full consideration to all comments that it received on the proposed amendments.

At its December 16–17, 1982, meeting, the Corporation's Board of Directors authorized final publication of the proposed regulations including changes made in response to comments received. At the same time, the Board amended proposed § 1612.4(f) by adding a new paragraph (f)(2) which limited the authority of recipients of Corporation funds to communicate with elected officials to responding to requests concerning appropriations or other measures directed to the authority or conduct of a recipient as a provider of legal services to eligible clients. The amendment also provided that a response could be directed only to the requesting party, and prohibited soliciting a request from an elected official to testify or otherwise advocate the support or defeat of legislative measures. However, on December 21, 1982, subsequent to the Board's approval of the final regulations as amended, the President signed Pub. L. 97–377, a second continuing resolution appropriating FY 1983 funds for the Corporation. Public Law 97–377 amended the lobbying provisions of the previous continuing resolution by removing the language in Pub. L. 97–276 which limited communications to elected officials to matters "pertaining to the authorization or appropriations of funds or oversight measures directly affecting the operation of the program involved." As a result, Pub. L. 97–377 invalidated the provision in amended § 1612.4(f)(2) which limited the substantive matters on which communications could be directed to