engines affected and the cost of compliance over the ten year period is no nominal that no substantial impact on foreign trade would be expected.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, and Aviation safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend part 33 of the Federal Aviation Regulations (14 CFR part 33) as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

1. The authority citation for Part 33 is revised to read as follows:

Authority: 49 U.S.C. App. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g).

2. Section 33.35 is amended by adding new paragraphs (f), (g), and (h) to read as follows:

§ 33.35 Fuel and induction system.

* * * * *

(f) The fuel system of the engine must be designed and constructed such that—

(1) If the mixture control linkage becomes disconnected, the mixture setting must automatically move to a position which will provide an acceptable operating mixture to allow continued safe flight.

(2) If the throttle control linkage becomes disconnected, the throttle setting must automatically move to a position which will allow the engine to continue to operate within its approved limits and provide sufficient power to allow continued safe flight.

(g) Operation under the conditions specified in paragraphs (f)(1) and (f)(2) of this section must be demonstrated in a manner acceptable to the Administrator as a part of this testing conducted under § 33.51, Operation test.

(h) The following information shall be specified in the approved instructions for installing and operating the engine required under § 33.51 for each mixture and throttle settling approved under this section:

(1) Mixture setting and throttle setting when the respective control linkage becomes disconnected.

(2) Range of power available and any altitude or environmental limitations which restrict that range of power.

(3) Engine operating procedures.

Issued in Washington, DC, on October 8, 1992.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 92-25097 Filed 10-19-92; 8:45 am]

BILLING CODE 4910-13-M

federal register

October 20, 1992
Tuesday

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven deferrals contained in the First Special Message for FY 1993, which was transmitted to Congress on October 1, 1992.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Attachments A and B)

Attachment A provides the status of the $930.9 million in budget authority being deferred from obligation as of October 1, 1992. Attachment B provides the status of each deferral reported during FY 1993.

Attachments

Richard Darman,
Director.

BILLING CODE 3110-01-M

ATTACHMENT A

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President................	930.9
Routine Executive releases through October 1, 1992	---
Overturned by the Congress.........................	---
Currently before the Congress......................	930.9

ATTACHMENT B
Status of FY 1993 Deferrals – As of October 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(–)		Congres–sional Action	Cumulative Adjust–ments (+)	Amount Deferred as of 10–1–92
		Original Request	Subsequent Change (+)		Cumulative OMB/ Agency	Congres–sionally Required			
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					492,736
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92					13,750
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92					364,582
Expenses, brush disposal	D93–4	40,241		10–1–92					40,241
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92					2,175
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D93–6	7,267		10–1–92					7,267
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					10,123
TOTAL, DEFERRALS		**930,875**	**0**		**0**	**0**		**0**	**930,875**

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06–Oct–92

[FR Doc. 92–25340 Filed 10–19–92; 8:45 am]

BILLING CODE 3110–01–C

federal register

Tuesday
October 20, 1992

Part V

National Aeronautics and Space Administration

14 CFR Part 1260
Grant Regulations; Proposed Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AB31

Grant Regulations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NASA proposes to revise its regulations for grants, including cooperative agreements, in order to streamline the requirements for their award and administration. The proposed revisions are intended to enable NASA grant officers to award grants within 30 days of receiving a request from the NASA technical office.

DATES: Comments must be received on or before December 4, 1992.

ADDRESSES: Submit comments to David Sudduth, Procurement Analyst, Procurement Policy Division, NASA Code HP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: David S. Sudduth, (202) 358–0485.

SUPPLEMENTARY INFORMATION:

Background

The latest revision to NASA's grant regulations was issued in October 1989. The changes in this proposed rulemaking are intended to enable NASA grant officers to award grants within 30 days of receiving a request from the NASA technical office. In addition, as part of the editorial changes, many sections have been consolidated to eliminate redundant material.

The major changes are summarized below.

1. Budget Format

The Appendix at the end of this notice contains the budget format to be used by grantees when submitting proposals in response to NASA Research Announcements and Announcements of Opportunity. The format is also suitable for use with unsolidated proposals. NASA officials may use Columns B and C to markup the budget instead of requesting a revised budget and delaying award of the grant (see § 1260.302(c)). Column C constitutes the budget on which the grant is based (approved budget). The Certification of Indirect Cost Rates, previously considered by NASA for part of this rulemaking, is not being proposed at this time.

2. Cost Sharing

Sections 1260.301(d)(1) and 1260.303(d) restate statutory requirements for cost sharing.

3. Multiple Year Grants

To encourage greater use of multiple year grants, § 1260.303(b)(3) and (4) provide that funding decisions for the unfunded years of a multiple year grant will be based on monitoring of the project and its reports. Renewal proposals or other requests for continued support will not ordinarily be required.

4. Grant Format

Section 1260.304(b) revises the format for grants. Most grant provisions would be incorporated by reference to these regulations rather than attached to the grant.

5. Unilateral Award

Section 1260.303(h) authorizes grant officers to award grants unilaterally. Award can be made in this manner instead of requiring a grantee official to indicate acceptance of the grant by signing the document.

6. Performance Reports, Summary of Research, and Withholding Payment

Section 1260.402(d) requires the grantee to submit a performance report in the 10th month after the anniversary date of the grant. Reports ordinarily should not exceed 3 pages, not counting bibliographies, abstracts, and lists of other media in which the research was discussed. Section 1260.605(d) specifies a percentage of the grant amount that the grant officer may withhold from payment to ensure the receipt of reports and the summary of research.

7. Prior Approval for Non-Technical Property and Threshold for Technical Property

Section 1260.408(b) is revised to require prior approval of the administrative grant officer for all property items of a non-technical nature that will be directly charged to the grant. Currently, a non-technical item is treated as technical property if it is primarily used in and is essential to the actual conduct of the research. Section 1260.408(a) raises the threshold for prior approval of technical property from $5,000 to $25,000. Definitions of technical property and non-technical property are added to the property definitions in 1260.201. Section 1260.408(h) establishes the submission date for the final inventory report of Government furnished equipment and grantee acquired equipment.

8. Subcontracts

Section 1260.413 revises the provision on subcontracts and specifies the information to be provided via the administrative grant officer for NASA's consent to subcontract.

9. Federal Contribution

The provision requiring grantees to publicize the percentage of Federal funding in press releases and other announcements has been eliminated. It covered a requirement that is no longer being added to appropriation acts.

10. Foreign National Employee Investigative Requirements

Section 1260.418 establishes the method by which grantees may request access to NASA installations for foreign nationals working under grants.

11. Prior Approval for Travel Exceeding 125% of Budgeted Travel

Under § 1260.420, total expenditures for travel are limited to 125 percent (or an increase of $1,000, whichever is greater) of the amount allotted for travel in the approved budget. Travel which will cause this limit to be exceeded requires the prior approval of the administrative grant officer. In addition, this provision and § 1260.406(d) advise the grantee about statutory requirements for international air transportation. The provision also refers grantees to Department of Transportation regulations on hazardous materials. Flowdown of the statutory and regulatory transportation requirements to subcontractors is required by § 1260.510(e).

12. Delegation of Administration to the Office of Naval Research (ONR)

Section 1260.501 provides for delegation of full administration of grants to ONR, including property administration, prior approvals, and closeout. It is anticipated that all new grants awarded after the effective date of the final rule resulting from this proposed rulemaking will be delegated. Existing grants may be considered for delegation on a case-by-case basis after discussion between the NASA grant officer and ONR.

13. Threshold Changes

The dollar thresholds of $1,000, in §§ 1260.408 (d) and (f) and 1260.506(a) (4), (5), (8), and (9), and $10,000, in § 1260.510(c)(7), are based on OMB Circular No. A–110 published in 1976. NASA will consider increasing the thresholds when A–110 is revised.

Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that these changes will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

An OMB clearance is being requested separately under the Paperwork Reduction Act.

List of Subjects in 14 CFR Part 1260

Grants.

Don G. Bush,
Assistant Administrator for Procurement.

1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: Public Law 97-258, 31 U.S.C. 6301 et seq.

2. Part 1260 is revised in its entirety as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

Subpart 1—General

§ 1260.101 Authority.

NASA awards grants and cooperative agreements under the authority of 31 USC 6301 to 6308. This part 1260 is issued by the Assistant Administrator for Procurement under authority delegated by the Administrator in NASA Management Instruction (NMI) 5101.8, entitled "Delegation of Authority to Take Certain Actions in Procurement and Related Matters (Assistant Administrator for Procurement)".

§ 1260.102 Applicability.

This part 1260 establishes policies and procedures for all research grants and cooperative agreements awarded by the National Aeronautics and Space Administration (NASA) to educational institutions and other nonprofit organizations. It does not cover training grants, facilities grants, grants for the Centers for the Commercial Development of Space, or contracts.

§ 1260.103 Amendment.

(a) *NASA Research Grant Handbook Directive (GHD).* This part 1260 will be amended by publication of changes in the **Federal Register** and by issuance of printed loose-leaf directives containing revised or additional pages for the handbook version of this part 1260. Each revised or new page will contain the date, the GHD number, and an indication of changes made. GHD's will be numbered consecutively for each edition of the handbook.

(b) *Grant Notice (GN).* Changes to the handbook which require immediate dissemination may be issued as Grant Notices by the Assistant Administrator for Procurement. The mailing list for Grant Notices is maintained by the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

(c) *Effective date.* An amendment to the NASA Research Grant Handbook may be implemented as soon as practicable following the date of issuance, but no later than 60 days thereafter, except as otherwise prescribed by the GHD or GN.

§ 1260.104 Publication and points of contact.

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

(b) The handbook is also available in loose-leaf form. Subscriptions to the NASA Research Grant Handbook may be purchased by other Government agencies, private concerns, universities, and individuals from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, telephone number (202) 783-3238. Requests should cite GPO Subscription Stock No. 933-001-00000-8. A subscription consists of the basic edition, plus all changes issued for an indefinite period.

(c) The NASA Research Grant Handbook, GHD's, and GN's will be distributed by Code HP directly to installation distribution points. These NASA elements must inform the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP) of the numbers of copies required. Requests for additional copies should be sent directly to Code HP by Installation distribution points.

(d) Installation directives, handbooks or similar guidance documents shall not repeat, paraphrase, extract, condense, be inconsistent with or otherwise restate the material contained in this handbook. Upon issuance of any directive, handbook, or similar guidance document affecting grants, Installations shall provide one copy to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP).

(e) NASA grant officers, addresses, and telephone numbers are as follows:

(1) John Werner, NASA Headquarters, Code HWG, Washington, DC 20546, (202) 358-0504.

(2) Anila Strahan, NASA Headquarters, Code HR, Space Station Freedom Procurement Office, Reston, VA 22091, (703) 487-7345.

(3) Barbara Hastings, NASA Ames Research Center, M/S 241-1, Moffett Field, CA 94035, (415) 604-5802.

(4) Gloria Blanchard, NASA Goddard Space Flight Center, Code 286, Greenbelt, MD 20771, (301) 286-3318.

(5) Daryl W. Chilcutt, NASA Johnson Space Center, M/S BE311, Houston, TX 77058, (713) 483-5441.

(6) Earl Gilbert, NASA Kennedy Space Center, OP-SCO, Kennedy Space Center, FL 32899, (407) 867-7346.

(7) Richard Siebels, NASA Langley Research Center, M/S 126, Hampton, VA 23665, (804) 864-2418.

(8) Lorene Albergottie, NASA Lewis Research Center, M/S 500/315, Code 1520, Cleveland, OH 44135, (216) 433-2781.

(9) Elaine Hamner, NASA Marshall Space Flight Center, Code AP29, Huntsville, AL 35812, (205) 544-0308.

(10) Frank Oerting, NASA Stennis Space Center, Code DA-10, Stennis Space Center, MS 39529, (601) 688-1638.

§ 1260.105 Deviations.

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

(1) When a prescribed grant provision is set forth verbatim in this handbook, and the Installation uses a provision covering the same subject matter, or omits such provision.

(2) When a grant provision is set forth in this handbook, but not for use verbatim, and the Installation uses a provision covering the same subject matter which is inconsistent with the intent, principle, and substance of the handbook provision.

(3) When a NASA form or other form is prescribed by this handbook, alteration of such form, or use of any other form for the same purpose.

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

(5) Creation of a form for grantee use which constitutes a "Collection of Information" within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and its implementation in 5 CFR part 1320.

(b) *Request for deviations.* Requests for authority to deviate from this handbook shall be submitted to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP). Such requests, signed by the Procurement Officer, will be submitted as far in advance as the situation will permit. Each request for a deviation shall contain as a minimum:

(1) A full description of the deviation and the circumstances in which it will be used.

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

(3) The name of the grantee or party to a cooperative agreement and identification of the grant or cooperative agreement affected, including the dollar value.

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

(5) Identification of the handbook requirement from which a deviation is sought.

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

§ 1260.106 Foreign grants.

Installations requiring grants with institutions located outside the United States, its possessions and its territories, shall forward the procurement package to the Office of Procurement, Headquarters Acquisition Division, Headquarters Grants and Closeout Branch (Code HWG) for negotiation, award, and administration. Code HWG will distribute copies of the grant to the Installation payment office, technical office, and grants office. See § 1260.422(f) for a special condition on inventions for use with foreign grants.

Subpart 2—Definitions

§ 1260.201 Definitions.

Throughout this part 1260 the term "grant" includes "cooperative agreement" unless otherwise indicated.

(a) *Administrative grant officer.* A grant officer assigned responsibility for grant administration, such as under a delegation from a NASA grant officer.

(b) *Administrator.* The Administrator or Deputy Administrator of NASA.

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

(d) *Cooperative agreement.* An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute. Substantial technical involvement between NASA and the recipient is expected and will be identified in the agreement.

(e) *Days.* Calendar days, unless otherwise indicated.

(f) *Educational institution.* Any institution which (1) has a faculty, (2) offers courses of instruction, and (3) is authorized to award a degree upon completion of a specific course of study.

(g) *Equipment.* As used in this handbook, "equipment" is another term for nonexpendable personal property.

(1) *Government furnished equipment.* Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a grantee.

(2) *Grantee acquired equipment.* Equipment purchased or fabricated with grant funds by a grantee, for the performance of research under its grant.

(h) *Grant.* An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute. No substantial technical involvement is expected between NASA and the grantee.

(i) *Grant officer.* A Government employee who has been delegated the authority to negotiate, award, or administer grants.

(j) *Grant provision.* A term or condition applicable to all grants awarded under this part 1260.

(k) *Grant specialist.* A Government employee who is assigned the responsibility of negotiating or administering grants.

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

(m) *Incremental funding.* A method of funding a grant where the funds initially allotted to the grant are less than the award amount. Additional funding is added as described in § 1260.302(d).

(n) *Minority education institution.* An institution meeting the criteria established in 34 CFR 607.2.

(o) *Multiple year grant.* A grant for which NASA obligates funds for an initial period and states an intention to obligate funds for one or more additional periods. The initial period together with the unfunded periods exceeds one year. Continuation of the grant is a unilateral decision by the Government based on availability of funds, continued relevance, and scientific progress.

(p) *Nonprofit organization.* An organization that qualifies for the exemption from taxation under § 501 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 501.

(q) *Performance report.* A concise statement of the research accomplished during the report period. This report will normally be limited to a maximum of three pages.

(r) *Property.*

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

(2) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than 2 years, and an acquisition cost of $500 or more per unit. A grantee may use its own definition of nonexpendable personal property, provided the definition would at least include all tangible personal property included in this definition.

(3) *Excess personal property.* Excess personal property means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by each agency's procedures.

(4) *Exempt property.* Exempt property means tangible personal property acquired in whole or in part with Federal funds, title to which is vested in the grantee without further obligation, except as provided in § 1260.506(a)(4), to the Federal Government.

(5) *Expendable personal property.* Expendable personal property refers to all tangible personal property not included in the definition of nonexpendable personal property.

(6) *Non-technical property.* Property which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make it suitable for a particular purpose. Examples include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

(7) *Personal property.* Personal property means property of any kind except real property. It may be tangible or intangible (such as patents, inventions, and copyrights).

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

(9) *Technical property.* Equipment which is usable only for research, medical, scientific, or technical activities.

(s) *Research.* Systematic, intensive study directed toward greater knowledge or understanding of the subject studied. The term includes conferences held for the purpose of communicating research results.

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

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

(v) *Special condition.* A term or condition appended to a grant if applicable.

(w) *Subcontract.* A written agreement between a grantee and a third party for the furnishing of services or supplies.

(x) *Summary of research.* Summary of results of the entire project. This summary will normally be limited to a maximum of 3 pages, not counting bibliographies, abstracts, and lists of other media in which the research was discussed.

(y) *Support.* Funding of a NASA research project.

(z) *Technical officer.* The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a grant.

(aa) *Women-owned small business concern.* A small business concern that is at least 51 percent owned by women who are United States citizens and who also control and operate the business.

Subpart 3—The Process

§ 1260.301 Proposals.

(a) *General.* A grant can result from: (1) A proposal submitted in response to a NASA Research Announcement (NRA), an Announcement of Opportunity (AO), or after approval by the Assistant Administrator for Procurement, another type of broad agency announcement (BAA) or (2) an unsolicited proposal.

(b) *Proposals under NRA's and AO's.* The NASA Research Announcement and NASA Announcement of Opportunity (broad agency announcements) are described in NASA Handbook 8030.6.

(c) *Unsolicited proposals.* Guideance on unsolicited proposals is contained in FAR 48 CFR subpart 15.5 and NASA FAR Supplement (NFS) 48 CFR Subpart 1815.5. The synopsis requirement in NFS 48 CFR 1815.507(b)(4), however, does not apply to the grant process. Contact with agency technical personnel prior to proposal submission is encouraged to determine if preparation of a proposal is warranted. These discussions should be limited to understanding NASA research needs and do not jeopardize the unsolicited status of any subsequently submitted proposal. The grant officer or university affairs officer may refer prospective grantees to technical personnel working in their area of research.

(d) *Cost and budget issues.* The allowability of costs chargeable to NASA research grants is governed by OMB Circulars No. A–21, No. A–88, No. A–110, No. A–122, No. A–128, and No. A–133.

(1) *Cost sharing.* A grant resulting from an unsolicited proposal will include cost sharing if the grantee will benefit from the research results through sales to non-Federal entities. In addition, NASA may accept cost sharing when voluntarily offered as part of any proposal. The amount of cost sharing is not a factor in determining whether to select a proposal for award.

(2) *Recovery of indirect costs.* Subject to applicable cost principles, NASA normally allows full recovery of indirect expenses, but in no case shall an overhead rate used for determining amounts chargeable to a grant exceed, in equivalence, the most recent overhead rate at the recipient institution for comparable research contracts of the Government. The indirect cost rates are negotiated between grantees and the cognizant agencies assigned under OMB Circular No. A–88. NASA is required to apply the negotiated rate for all grants awarded to a grantee. Added or lowered amounts of indirect cost must be determined by the cognizant agency.

(3) *Multiple year grants.* In accordance with NASA policy to foster continuity of research, multiple year grant proposals are encouraged where appropriate, for a period generally up to 3 years. For multiple year grants that exceed 3 years, the technical officer

shall ensure compliance with paragraph 4.h. of NMI 8320.1D. Proposals for multiple year grants shall include a separate budget exhibit for each year of research.

(4) *Budget content*. Proposals shall include budgets as prescribed in this handbook (Exhibit B, Enclosure (2), Budget Summary, of the appendix to this part 1260) and in NRA's and AO's. Narrative detail must support the budgets.

(5) *Incremental funding*. NASA reserves the right to either fully fund or incrementally fund research grants.

(e) *Certifications and assurances*. The following certifications or assurances are required:

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

(2) *Debarment and suspension, drug-free workplace, and lobbying*. Each proposal shall contain certifications concerning debarment and suspension, drug-free workplace, and lobbying. These certifications and other requirements are contained in 14 CFR parts 1265 and 1271. NASA does not require any particular form or format for the certifications under 14 CFR part 1265.

§ 1260.302 Evaluation and selection.

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

(1) *Proposals under NRA's, AO's, and other BAA's (see § 1260.301(a))*. The technical officer will evaluate proposals in accordance with the criteria in the NRA, AO, or other BAA. Proposals selected for award will be supported by documentation as described in paragraph (b)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the NRA, AO, or other BAA.

(2) *Unsolicited proposals*. Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Recommendations to fund unsolicited proposals will be supported by documentation as described in paragraph (b)(2) of this section. Institutions submitting unaccepted proposals will be notified in writing.

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

(1) A proposal selected under an NRA, AO, or other BAA (see § 1260.301(a)) shall be supported by a signed selection statement and technical evaluation based on the evaluation criteria stated in the NRA, AO, or other BAA.

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

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

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

(iii) Potential contribution of the effort to the agency's specific mission.

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

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

(vi) Current, open NRA's under which the unsolicited proposal could be evaluated.

(3) When most of the proposed budget is for equipment or travel and associated indirect cost, the technical officer shall sign, and submit for grant officer approval, an Equipment Justification or Travel Justification. The justification shall describe the extent to which the equipment or travel is necessary to support NASA-sponsored research.

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

(2) The grant officer will review the budget and the changes made by the technical officer, if any, to identify any budget item which may be unallowable under the cost principles, or which appears unreasonable or unnecessary after considering any budget explanations. The grant officer will complete Column C of the proposed budget after discussing significant changes with the grantee. The grant officer should only request the additional budget detail which is necessary to comply with the instructions in Exhibit B, Enclosure (2), Budget Summary, of the appendix to this part 1260.

(d) *Incremental funding*. Grants with anticipated annual funding exceeding $1 million may be funded for less than the amount and period of performance stated in the proposal provided:

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

(2) Procedures are established for adding all remaining funds to the grant without any action required of the grantee. The grant officer shall notify the grantee in writing when the remaining funds have been obligated on the grant.

(3) The incremental funding special condition contained in § 1260.422(d) is included in the grant.

(e) *Printing, binding, and duplicating*. Proposals which involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NMI 1490.1. The grant officer will be advised in writing of the results of the ICPMO review.

(f) *Rights in data*. Section 1260.410 is adequate only for grants for basic or applied research, where the principal purpose (or only expected NASA involvement) is the publication or dissemination of the results, such as in journals or NASA publications (see § 1260.4020. Other expected purposes, especially where there may be substantial NASA involvement under a cooperative agreement or grantee development of software programs, may require a special condition providing customized or expanded data rights. The special condition shall be developed by, or consultation with, intellectual property or patent counsel and may be used in the grant.

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

(1) By accepting a grant containing § 1260.414, the grantee agrees (for grants exceeding $100,000) that the expenditure of grant funds is in compliance with the Clean Air Act and the Federal Water Pollution Control Act.

(2) The Administrator may exempt for a period not to exceed 1 year any individual or class of grant or any subtract thereunder from the requirements of the Clean Air and Federal Water Pollution Control Acts. Requests for exemptions or renewals thereof shall be made to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

§ 1260.303 Award procedures.

(a) *General.* NASA policy is to use multiple year grants to support research. However, grants for lesser periods may be awarded.

(b) *Multiple year grant.* (1) NASA fosters continuation of research and recognizes that research projects may span several years. Proposers are encouraged to submit research proposals that describe the entire research project, supported by annual work and budget plans.

(2) The entire research proposal will be evaluated by the cognizant technical office with the recommendation for award identifying the proposal as a multiple year grant. By use of the Multiple Year Grant special condition, the grant clearly indicates at time of award, the initial grant period and funded value as well as the planned values of the subsequent years of the multiple year grant.

(3) Thus, neither a new proposal nor an additional technical evaluation are required for subsequent funding in the approved period unless a special need for new reviews is indicated by monitoring of the project and of its reports, by the introduction of work outside the scope of the approved proposal, or by the need for substantial unanticipated funding. The technical office will notify the grantee if the grant is to be funded; if additional information is required, or if the Government has determined that additional funding will not be provided.

(4) Based upon availability of funds, continued research relevance and scientific progress made by the grantee (as determined by the technical office by monitoring of the grant, including timely submission of performance reports) the Government may elect to fund the subsequent grant periods as identified in the multiple year grant. To insure continuation a multiple year grant, the technical office must forward to the grant office a funded PR in the amount that the technical officer recommends for continuation. This continued funding for the grant should be processed 45 days before the expiration of the funded period.

(5) Section 1260.422(c) is the special condition for multiple year grants.

(6) Normally, each year of a multiple year grant will be funded at the approximate level indicated in the original award instrument, subject to satisfactory scientific progress, availability of funds and continued relevance to NASA programs. However, NASA program constraints and developments within the project may dictate adjustment in the originally anticipated level. When the actual funding differs from the planned funding, the technical officer shall mark up Column B of the budget summary and provide it to the grant officer with an explanation of any increases. The grantee may rebudget under the grant provisions to keep the project within the funding actually provided.

(7) A funded extension beyond the period listed in the multiple year grant special condition may be proposed, however, it will require the submission of a new proposal, subject to full review as discussed in § 1260.303(c).

(c) *Annual grant.* Grants may be awarded for a short term (e.g., on an annual basis), and may be extended if appropriate. The extension should be executed prior to the grant expiration date. Such extensions (other than no-cost extensions) must be supported by a new proposal from the grantee. A complete technical evaluation and support documentation are required and should be forwarded to the grant office at least 6 weeks prior to the expiration of the original grant term. If otherwise acceptable, NASA may fund the proposal extensions through a multiple year grant or by an extension of the existing grant.

(d) *Cost sharing.* NASA grantees usually gain no measurable benefit ("mutuality of interest") from grants, other than conducting the research. The statutory requirement for cost sharing based on mutuality of interest applies to NASA grants resulting from unsolicited proposals only in exceptional cases where the grant officer has reason to believe that the grantee will benefit from the research results through sales to non-Federal entities. When cost sharing is required by statute or when the grant officer accepts voluntarily-offered cost sharing, the grant officer shall use a special condition substantially as shown in § 1260.422(e).

(c) *Partial support.* NASA may provide partial support for a research project or conference where additional Federal funding is being provided by other agencies. If the grant also involves cost sharing by the grantee, the grant officer will ensure that the cost sharing special condition applies only to the non-Federal funding.

(f) *Grant renewals.* If grants are to be renewed, this should be done prior to the grant expiration date. Although the grant officer has little control over the timely receipt of purchase requests, he/she is responsible for informing the technical officer of current lead-time requirements and for timely processing continuation agreements. Alternatively, if a grant is not to be renewed, the grantee should be given a minimum of 4 months advance notice of pending close-out (see § 1260.511(a)).

(g) *Instrument usage.* To eliminate the paperwork burdens associated with the closeout of a grant and negotiation of a new grant for continuing the same effort, ongoing efforts at the same institution will be continued by amending or supplementing the current instrument unless there is a significant change in the nature of the work. If a new grant must be issued, the period of performance should be continuous with the previous award.

(h) *Unilateral award.* Grants may be awarded, amended, or extended unilaterally at the discretion of the grant officer.

§ 1260.304 Format and numbering.

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

(b) *Formats.* Grant officers are authorized to use the formats in Exhibit B of the appendix of this part 1260 for the award of all research grants and cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed. Special conditions, if required, shall be placed on a separate page. In all instances, the heading, "SPECIAL CONDITION(S), GRANT (COOPERATIVE AGREEMENT) N______", shall be used, followed by the applicable special condition(s). Use of preprinted checklists containing all special conditions or a separate page for each special condition is not authorized. An acceptance block may be added when the grant officer considers it necessary to require bilateral execution of the grant. When enclosing detailed budgets with the grant, the grant officer will strike out any information that would reveal salaries paid by the grantee.

(c) *Grant numbering.* The identification numbering system for all research grants shall conform to NFS 48

CFR 1804.7102-3, except that a NAG prefix will be used in lieu of the NAS prefix. The prefix designation, will include the Center Identification Number; e.g., NAGW would be the Headquarters prefix designation, and NAG5 would be the Goddard prefix designation. Grants will be sequentially numbered beginning with "1."

(d) *Cooperative agreement numbering.* The numbering system for cooperative agreements will be the same as for grants, except that NCC (for Centers) and NCCW (for Headquarters) prefixes shall be used in lieu of the NAG and NAGW prefixes.

§ 1260.305 Distribution of grants.

Copies of grants and grant supplements will be provided to: payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), P.O. Box 8757, BWI Airport, Maryland 21240, Attn: Acquisitions, and any other appropriate recipient. Copies of the statement of work, contained in the grantee's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The grant file will contain a record of the addresses for distributing grants and grant supplements.

Subpart 4—Provisions and Special Conditions

§ 1260.401 General.

The provisions set forth in this subpart 1260.4 shall be incorporated in and made a part of all NASA research grants (§§ 1260.402 through 1260.421) and cooperative agreements (§§ 1260.402 through 1260.421 and 1260.422(b)) subject to this part 1260. Whenever the words "grant" or "grantee" appear in these provisions and special conditions, they shall be deemed to include, as appropriate, the words "cooperative agreement" and "recipient of cooperative agreement," respectively. The provisions for use on grants will be incorporated by reference (Exhibit B, Enclosure (1), of the appendix to this part 1260). Special conditions (§ 1260.422 (b) through (h)) will be incorporated in full text. For inclusion of provisions in subcontracts, see § 1260.510(d) and (e).

§ 1260.402 Publications and reports.

Publications and Reports (Aug. 1992)

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

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

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

(d) Reports shall be informal in nature and contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. Reports ordinarily should not exceed 3 pages, not counting bibliographies, abstracts, and lists of other media. The grantee shall submit the following technical reports:

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

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

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

(1) Title of the grant.

(2) Type of report.

(3) Name of the principal investigator.

(4) Period covered by the report.

(5) Name and address of the grantee's institution.

(6) Grant number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—administrative grant officer.

(2) Copy—technical officer.

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), P.O. Box 8757, BWI Airport, MD 21240.

§ 1260.403 Extensions.

Extensions (Jun. 1992)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research, and grants may be extended for additional periods of time. Any extension requiring additional funding should be supported by a proposal submitted at least 3 months in advance of the expiration date of the grant.

(b) Grantees may extend the expiration date of a grant or a supplement thereto if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, the grantee may make a single no-cost extension not exceeding 12 months. The grantee must make the extension prior to the expiration date and must notify the administrative grant officer in writing within 10 days of making the extension. Requests for all other extensions (in excess of 30 days) must be submitted, in writing, to the administrative grant officer for prior approval.

§ 1260.404 Suspension or revocation.

Suspension or Revocation (June 1992)

(a) It is a condition of each grant that it may be suspended or revoked in whole or in part by NASA after consultation with the grantee. Suspension or revocation of the grant prior to the planned expiration date will be reserved for exceptional situations which cannot be handled any other way.

(b) Suspension of the grant may occur when the grantee has failed to comply with the terms of the grant. Upon reasonable notice to the grantee, NASA may temporarily suspend the grant, withhold further payments, and prohibit the grantee from incurring additional costs, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension.

(c) In the event of revocation, the grantee shall refund to NASA any unexpected funds that it has received under the grant, except such portion thereof as may be required by the grantee to meet commitments which had in the judgment of NASA become firm prior to the effective date of revocation and are otherwise appropriate. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument may be grounds for revocation, unless alternative arrangements are made and approved in writing by the administrative grant officer.

§ 1260.405 Change in principal investigator or scope.

Change in Principal Investigator or Scope (Feb. 1992)

The grantee shall obtain the approval of the NASA grant officer to change the principal investigator or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator. Change in objective or scope, likewise, requires prior approval.

§ 1260.406 Allowable costs.

Allowable Costs (Jun. 1992)

(a) OMB Circular No. A-21, "Cost Principles for Educational Institutions," OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations," and OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations," as applicable, govern the allowability of costs chargeable to research sponsored by NASA under grants, except that cost-related and administrative "prior approvals" required by A-21 and A-110 are waived unless specifically required elsewhere in the grant provisions or special conditions.

(b) Payments to individuals for consultant services under a NASA grant shall not exceed the daily equivalent of the maximum rate paid to a GS-18 Federal employee. The limit applies to personal compensation exclusive of expenses and indirect cost.

(c) Grantees may approve preaward costs of up to 90 days prior to the effective date of a new award, provided the costs are necessary for the effective and economical conduct of the project and they are otherwise allowable under the terms of the grant. Any preaward expenditures are made at the grantee's risk. Approval by the grantee does not impose any obligations on NASA in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the grantee anticipated.

(d) In addition, Comptroller General decisions govern allowability of costs for international air transportation (see § 1260.420(b)).

1260.407 Financial management.

Financial Management (Jun. 1992)

(a) *Payment.* Advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and, if NASA has delegated administration, to the administrative grant officer, within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the 4 months following the quarter being reported. The final SF 272 is due within 90 days after the expiration date of the grant.

(b) *Management and audit.* The grantee's financial management system shall meet the standards set forth in § 1260.509. The provisions of OMB Circular No. A-133, "Audit of Institutions of Higher Education and Other Nonprofit Organizations," or OMB Circular No. A-128, "Audits of State and Local Governments," as applicable, apply to this award. NASA Federal domestic assistance numbers do not apply to NASA grants.

(c) *Records.* Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this grant shall be retained for a period of 3 years, except that (1) if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and (2) records for nonexpendable property acquired with grant funds shall be retained for 3 years after its final disposition. The retention period starts from the date of the submission of the final Federal Cash Transactions Report (SF 272). The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the grantee and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this paragraph (c) shall apply to any subcontractor performing substantive work under this grant.

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

§ 1260.408 Equipment and other property.

Equipment and Other Property (Jun. 1992)

(a) NASA grants permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $25,000 and not included in the approved proposal budget requires the prior approval of the administrative grant officer unless the item is merely a different model of an item shown in the approved proposal budget. Requests for prior approval of technical property may be made telephonically to the administrative grant officer.

(b) Grantees may not purchase, as a direct cost the grant, items of non-technical property, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment. If the grantee requests an exception, the grantee shall submit a written request for administrative grant officer approval, prior to purchase by the grantee, stating why the grantee cannot charge the property to indirect costs.

(c) Under no circumstances shall grant funds be used to acquire land or any interest therein, to acquire or construct facilities, or to procure passenger carrying vehicles.

(d) Title to equipment purchased with grant funds shall vest in the grantee unless otherwise provided. The Government reserves the right to require transfer to itself of title to items costing more than $1,000 each or, when fabricated into a single coherent system, in aggregate cost. Such reservation is subject to § 1260.506.

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

(f) Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or expiration of the grant, and the property is not needed for any other Federally sponsored project or program, the grantee shall retain the property for use on non-Federal sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in accordance with subparagraph 6c, Attachment N to OMB Circular No. A-110.

(g) The grantee shall establish and maintain property management standards for nonexpendable personal property and otherwise manage such property as set forth in § 1260.507.

(h) Annually by July 31, the grantee shall submit 2 copies of an inventory report which lists all Government furnished equipment in their custody as of June 30. The grantee shall submit 2 copies of a final inventory report by 30 days after the expiration date of the grant. The final inventory report shall contain a list of all grantee acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in § 1260.507(a)(1) and be submitted to the administrative grant officer. When Government furnished equipment is no longer needed, the grantee shall notify the administrative grant officer, who will provide disposition instructions.

§ 1260.409 Patent rights—retention by the grantee.

Patent Rights Retention by the Grantee (Feb. 1992)

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

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

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

(c) The NASA regulation applicable to paragraph (e) of the "Patent Rights" clause is at 14 CFR Subpart 1245.2, Licensing of NASA Inventions, § 1245.210.

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

(5) The grantee shall include a list of all Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal, and a complete list (or a negative statement) for the entire award period shall be included in the summary of research.

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

(f) The NASA implementing regulation for paragraph (g)(2) of the "Patent Rights" clause is at 48 CFR 1827.373(b) (NASA FAR Supplement, 18-27.373(b)).

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

(l) *Communications.*

A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Installation Patent Counsel and the administrative grant officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for 6 months from the date of receipt, in order for a patent application to be filed, provided that the grantee identify the information and the "subject invention" to which it relates at the time of submittal. If required by the administrative grant officer, the grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the grantee has applied for patents.

§ 1260.410 Rights in data.

Rights in Data (Feb. 1992)

The grantee grants to the Government, for Governmental purposes, the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this grant.

§ 1260.411 Security.

Security (Jun. 1992)

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

§ 1260.412 Civil rights.

Civil Rights (Feb. 1992)

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

§ 1260.413 Subcontracts.

Subcontracts (Jun. 1992)

(a) NASA grant officer consent is required for subcontracts over $25,000, if not accepted by NASA in the original proposal, and may be requested through the administrative grant officer by providing the name of the subcontractor and the purpose and dollar amount of the subcontract. For subcontracts over $100,000, the grantee shall provide the following additional information, as a minimum, to the administrative grant officer for forwarding to the NASA grant officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

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

§ 1260.414 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts (Mar. 1992)

If this grant or supplement thereto is in excess of $100,000, the grantee agrees to notify the administrative grant officer promptly of the receipt, whether prior or subsequent to the grantee's acceptance of this grant, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this grant or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a grant in excess of $100,000, the grantee (a) stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance; (b) agrees to comply with all requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq. as amended by Public Law 91–604) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. as amended by Public law 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned Sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the grant; and (c) agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of $100,000, and to take such action as the administrative grant officer may direct to enforce such criteria and requirements.

§ 1260.415 Procurement standards.

Procurement Standards (Feb. 1992)

The grantee's procurement practices shall meet the standards set forth in § 1260.510.

§ 1260.416 Interest bearing accounts.

Interest Bearing Accounts (Jan. 1992)

Advances of federal funds shall be maintained in interest bearing accounts. Interest earned on federal advances deposited in such accounts shall be remitted to NASA at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued the grant. Interest amounts up to $100 per year may be retained by the grantee

§ 1260.417 Debarment and suspension and drug-free workplace.

Debarment and Suspension and Drug-Free Workplace (Feb. 1992).

NASA grants are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by § § 1265.110 or 1265.610. The certifications required by that regulation must accompany extension proposals.

§ 1260.418 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements (May 1992)

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

(b) The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the grant requires a foreign national to be given access immediately, the technical officer may submit an escort request to the Installation's Chief of Security.

§ 1260.419 Restrictions on lobbying.

Restrictions on Lobbying (Apr. 1990)

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

§ 1260.420 Travel and transportation.

Travel and Transportation (Jun. 1992)

(a) Total expenditures for travel are limited to 125 percent (or an increase of $1,000, whichever is greater) of the amount allotted for travel in the approved budget. Within this limit, the additional amount shall be obtained by reducing other areas of the approved budget. Travel which causes this limit to be exceeded requires the prior approval of the administrative grant officer.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 App. U.S.C. 1517) (Fly America Act) requires the grantee to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

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

§ 1260.421 Program income.

Program Income (Jun. 1992)

Program income shall be retained by the grantee and shall be added to funds already committed to the project and used to further project objectives.

§ 1260.422 Special conditions.

(a) In addition to the provisions set forth in this subpart, NASA grants are subject to various conditions which either are not applicable to all awards or are temporary in nature. Such conditions are not incorporated by reference or printed in NASA Form 1463A, "NASA Provisions for Research Grants and Cooperative Agreements," but are appended in full text to specific grants, as applicable.

(b) With respect to cooperative agreements under 31 U.S.C. 6305, it has been determined that the NASA guidelines and regulations applicable to grants will apply to cooperative agreements. The cooperative agreement, NASA Form 1562, shall contain a special condition stating the nature of the recipient/NASA interaction in accordance with 31 U.S.C. 6305. That special condition is as follows:

Cooperative Agreement Special Condition (Feb. 1992)

This award is a cooperative agreement as it is anticipated that there will be substantial NASA involvement during performance of the effort. That is, the recipient can expect NASA collaboration or participation in the management of the project. The term "grant" and "grantee" mean "cooperative agreement" and "recipient of cooperative agreement," respectively, wherever the terms appear in provisions and special conditions included in this agreement. NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort. (Insert here a concise statement of the exact nature of the cooperative interactions. In addition, note that the statement must deal with existing facts and not contingencies. Under no circumstances shall the statement be used as a work statement or an expanded grant title.)

(c) See § 1260.303(b)(5).

Multiple Year Grant (Nov. 1991)

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

Second year $________. Anticipated funding date: ________.

Third year $________. Anticipated funding date: ________.

(Additional periods may be included or omitted as applicable.)

(d) See § 1260.302(d).

Incremental Funding (Jun. 1992)

Only $______ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making an additional allotment in the amount of $______ by ______.

These funds will be obligated to the grant as appropriated funds become available without any action required by the grantee, and the grantee will be given written notification by the NASA grant officer. NASA is not obligated to reimburse the grantee for the expenditure of amounts in excess of the total funds allotted by NASA.

(e) See § 1260.303(d).

Cost Sharing (Jun. 1992)

The grantee agrees to share in the cost of the research by charging to the Government no more than ______ percent of the costs incurred in performing the work contemplated by the grant as determined to be allowable in accordance with 14 CFR 1260.406. The remaining ______ percent, or more, of the allowable costs of performance so determined will constitute the grantee's share and will not be charged to the Government under this grant or under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). The grantee will maintain records of all grant costs claimed by the grantee as constituting part of its share and such records shall be subject to audit by the Government.

(f) See § 1260.106. "INVENTION REPORTING AND RIGHTS—FOREIGN" in NASA FAR Supplement 18–52.227–85 (48 CFR 1852.227–85) (suitably tailored to identify the parties and the instrument) may be used as a special condition unless in consultation with Installation Patent Counsel, a different provision would be more appropriate.

(g) See § 1260.605(a).

Reports Substitution (Feb. 1992)

Technical reports may be substituted for the required performance reports. The title page of such reports shall clearly indicate that the substitution has been made, showing the period covered by the originally required performance report.

(h) See § 1260.605(d).

Withholding (Jul. 1992)

Pending receipt of the satisfactorily completed summary of research and other final reports under this grant, the financial management office will withhold $________ from the last payment.

Subpart 5—Administration

§ 1260.501 Delegation of administration.

(a) *Policy.* Pursuant to the Government-wide "cross-servicing" policy, it is NASA's policy to delegate administration to the Office of Naval Research (ONR).

(b) *Procedures.* Delegations will be made using NASA Form 1430, "Letter of Contract Administration Delegation, General"; NASA Form 1430A, "Letter of Contract Administration Delegation, Special Instruction"; and NASA Form 1431, "Letter of Acceptance of Contract Administration Delegation." The grant officer will inform the grantee, in writing, that the delegation has been made, and provide specific instruction regarding actions requiring ONR involvement.

(c) *Types of administration.*

(1) *Full administration.* The grant officer will use NASA Form 1430, as provided in Exhibit A, Figure 1, of the appendix to this part 1260, to delegate to ONR full administration for each grant, except when ONR is not the cognizant administration office or when ONR administration services are not reasonably available.

(2) *Property administration.* Property administration (review and approval of grantee's property control procedures, and on-site surveys of grantees' property control systems) and plant clearance (screening, redistribution and disposal of Government property from grantee's work sites) will be delegated to ONR. Installations will use standard, special instruction wording on the NASA Form 1430A, as provided in Exhibit A, Figure 2, of the appendix to this part 1260.

(3) *Closeout.* Grant closeout may be retained if the grant officer determines that delegation to ONR is not in the best interest of NASA. Closeout delegation must be preceded or accompanied by a Property Administration and Plant Clearance Delegation (if any grantee acquired or Government-furnished equipment (GFE) is involved). Installations will use standard special instruction wording on the NASA Form 1430A, as provided in Exhibit A, Figure 3, of the appendix to this part 1260. ONR shall obtain the approval of the NASA grant office prior to initiating closeout. To expedite closeout, NASA grant officers shall respond to ONR inquiries within 30 days. NASA grant officers shall inform individuals named on NASA Form 1430A, Item 4(f), (i) that a delegation has been made and (ii) of the requirement for timely responses to any inquiries received directly from ONR.

§ 1260.502 Grant supplements.

The NASA grant officer may modify a grant by using a grant supplement. Uses include multiple year grants and grant renewals (§ 1260.303 (b) and (f)), extensions (§ 1260.403), incremental funding (§ 1260.302(d)), and novations (§ 1260.505).

§ 1260.503 Adherence to original budget estimates.

Although NASA assumes no responsibility for budget overruns, the grantee may spend grant funds for the proposed research without strict adherence to individual allocations within total budgets, except as provided in § 1260.408 (a) and (b), § 1260.413(a), and § 1260.420.

§ 1260.504 Suspension or revocation.

(a) *Policy.* Suspension or revocation of a grant prior to the planned expiration date must be reserved for exceptional situations which cannot be handled any other way. Before suspending or revoking any grant with a university, the NASA grant officer and technical officer shall take into account the consequences to graduate students working under the grant. Revocation is a right reserved by NASA (see § 1260.404).

(b) *Suspension of the grant.* When a grantee has failed to comply with the terms of a grant, NASA may, upon reasonable notice to the grantee, temporarily suspend the grant, withhold further payments, and prohibit the grantee from incurring additional costs, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension.

§ 1260.505 Transfers, novations, and change of name agreements.

(a) *Transfer of grants*. Novation as provided in § 1260.505(b), is the only means by which a grant may be transferred from one institution to another. When the principal investigator changes organizational affiliation and desires support for the research at a new location and novation is not used, a new proposal must be submitted to NASA via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

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

§ 1260.506 Use, disposition, and vesting of title to equipment.

(a) *Policy*. The following policies will be reflected, as applicable, in NASA grants.

(1) Title to equipment purchased with grant funds vests in the grantee subject to § 1260.506(a)(4), and the equipment does not automatically follow the principal investigator when he or she leaves the institution.

(2) Title to Government furnished equipment remains with the Government. In accordance with Public Law 94–519, NASA policy is not to furnish excess property, acquired by NASA from other Government agencies, to grantees.

(3) When Government furnished equipment is reported excess by a grantee, the administrative grant officer will report the equipment to the Installation property disposal officer for further NASA use. If NASA has no further need for the property, it shall be declared excess by the Installation property disposal officer and reported to the General Services Administration. Disposition instructions will be issued to the grantee by the administrative grant officer after completion of the Federal-wide review by GSA.

(4) NASA may require transfer to it of title to individual items or coherent systems (§ 1260.506(a)(9)) of grantee acquired equipment purchased at a cost of more than $1,000 subject to the following conditions:

(i) NASA shall notify the grantee in writing.

(ii) NASA shall issue disposition instructions by 120 days after the end of the grant under which it was acquired. If NASA fails to issue disposition instructions within the 120-day period, the grantee shall apply the standards of subparagraphs 6b and 6c, Attachment N to OMB Circular No. A–110, as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for Government furnished equipment discussed in § 1260.507(a).

(iv) When title is transferred to the Federal Government, the provisions of subparagraph 6c(2)(b), Attachment N to OMB Circular No. A–110, shall be followed.

(5) Title to equipment costing $1,000 or less is not subject to transfer to the agency, except under the conditions of § 1260.506(a)(9).

(6) NASA procedure does not require a grantee to transfer title to grantee acquired equipment directly to another grantee or contractor. Such transfers are accomplished by the Government's taking title and issuing it as Government furnished equipment.

(7) NASA normally will not recover equipment that a grantee desires to retain unless it is required for NASA work at a different location.

(8) Cost sharing by NASA and a grantee in the acquisition of individual items or coherent systems of equipment, that could result in joint ownership, shall normally be avoided. When joint ownership cannot be avoided, and the NASA contribution will exceed $1,000, agreement regarding NASA retention of its option to take title and the conditions under which the option (if retained) will be exercised, shall be reached and documented prior to purchase.

(9) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities, and the separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes grantee-owned components (for cost sharing or other purposes), § 1260.506(a)(8) applies. The requirement for agreement regarding NASA's retention of its option to take title shall further apply where it is expected that one or more grantee-acquired components costing $1,000 or less will be fabricated into a single coherent system costing in excess of $1,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

(b) *Procedures*.

(1) When a decision is made to revoke, not renew, or otherwise not continue support of a grant, the administrative grant officer shall notify the grantee in writing of the requirement under the grant for submission of a final inventory report of grantee acquired equipment and Government furnished equipment.

(2) When the technical officer desires that NASA take title to an item of grantee acquired equipment, the technical officer shall request the administrative grant officer to obtain information regarding the grantee's desire to retain the equipment, the use to which it would be put in the absence of further NASA support of the grant, and the effect of removal of the equipment.

(3) The administrative grant officer shall obtain the information described in § 1260.506(b)(2) and provide copies to the technical officer and the Headquarters Supply and Equipment Management Office (Code JIE) for their coordinated review and recommendation regarding acquisition of title. The technical officer shall inform the administrative grant officer of the recommendation by means of a memorandum concurred in by Code JIE.

(4) When NASA acquires title to items of grantee acquired equipment, the administrative grant officer shall notify both the cognizant NASA Installation financial management officer and supply and equipment management officer to ensure proper entries in financial and property accounting records.

§ 1260.507 Property management standards.

(a) *Nonexpendable personal property*. As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following property management standards for Government furnished equipment and grantee acquired equipment:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

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

(iii) Source of the property, including grant or other agreement number.

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

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

(vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

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

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the administrative grant officer.

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

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

(b) *Exempt property.* Title to nonexpendable personal property acquired with grant funds shall be vested in the grantee upon acquisition, unless it is determined that to do so is not in furtherance of the objectives of NASA. When title is vested in the grantee, the grantee shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in §§ 1260.408(h), 1260.506(a)(4), and 1260.507(a).

§ 1260.508 Screening of requests for Government furnished equipment.

(a) Pursuant to NMI 4000.2, "NASA Equipment Management," a NASA Equipment Management System (NEMS) has been established to identify and effect optimum use and reuse of Government-owned equipment items of high value and reuse potential. The NEMS and this paragraph apply only to grantee requests for Government furnished equipment. Requests for grantee acquired equipment are neither required nor encouraged to be screened through the NEMS.

(b) When a grantee requests Government furnished equipment of $1,000 or more, the grant officer shall screen the item through the Installation's NEMS coordinator. Screening requests shall list the manufacturer, model number, description, national stock number, estimated cost, and any other information deemed necessary by the NEMS coordinator to properly identify the item. Urgent requests may be screened by telephone and documented.

(c) When suitable equipment is located through the foregoing procedures, the holding Installation will place a "freeze" on the item for 10 working days, pending shipping instructions. Extension of the freeze period must be requested through the NEMS Coordinator if shipping instructions cannot be furnished within the required period. (See paragraph 5.307, NASA Equipment Management Manual, NHB 4200.1.)

§ 1260.509 Financial management standards.

As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following financial management standards:

(a) Accurate, current, and complete disclosure of the financial results of the project.

(b) Records that identify adequately the source and application of funds for the grant. These records shall contain information pertaining to the award, authorization, obligations, unobligated balances, assets, outlays, and income.

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

(d) Comparison of actual outlays with obligated amounts for the grant.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee. When advances are made by a letter-of-credit method of electronic funds transfer, the grantee shall make drawdowns as close as possible to the time of making disbursements.

(f) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of § 1260.406 and any other terms of the grant.

(g) Accounting records that are supported by source documentation.

(h) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 1260.510 Procurement standards.

As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following procurement standards:

(a) The grantee shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of a subcontract using NASA funds. No employee, officer, or agent shall participate in the selection, award, or administration of subcontracts under grants using NASA funds, where, to his or her knowledge, there exists a financial interest on the part of (1) that person, (2) that person's immediate family or partners, or (3) any organization in which that person or an immediate family member or partner has a financial interest or with whom he or she is negotiating or has any arrangement concerning prospective employment. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors or potential subcontractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the grantee's officers, employees, or agents.

(b) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among its subcontractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective subcontractor performance and eliminate unfair competitive advantage, subcontractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals should be excluded from competing for such procurements, except when NASA gives approval to a grantee's request to waive this requirement for a particular procurement. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee—price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the grantee. Any and all bids/offers may be rejected when it is in the grantee's interest to do so.

(c) The grantee shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts shall be made by the grantee to utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as sources of supplies and services. Such efforts should allow these sources the maximum practicable opportunity to compete for subcontracts utilizing NASA funds.

(4) The types of procuring instruments used, e.g., fixed-price subcontracts, cost reimbursable subcontracts, purchase orders, and incentive subcontracts, shall be determined by the grantee but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Subcontracts shall be made only with responsible subcontractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as subcontractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

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

(7) Procurement records and files for purchases in excess of $10,000 shall include the following:

(i) Basis for subcontractor selection.

(ii) Justification for lack of competition when competitive bids or offers are not obtained.

(iii) Basis for aware cost or award price.

(8) A system for subcontract administration shall be maintained to ensure subcontractor conformance with terms, conditions, and specifications of the subcontract, and to ensure adequate and timely follow up of all purchases.

(d) The following provisions are required in subcontracts in excess of $10,000 awarded by the grantee or a subcontractor, regardless of tier.

(1) Provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which subcontractors violate or breach subcontract terms and provide for such remedial actions as may be appropriate.

(2) Provisions for termination by the grantee, including the manner by which termination will be effected, and the basis for settlement. In addition, such subcontracts shall describe conditions under which the subcontract may be terminated for default, as well as conditions where the subcontract may be terminated because of circumstances beyond the control of the subcontractor.

(3) A provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).

(4) For negotiated subcontracts, a provision to the effect that the grantee, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the subcontractor which are directly pertinent to the specific project, for the purpose of making audits, examinations, excerpts, and transcriptions.

(e)(1) All subcontracts, regardless of tier, which may involve international air transportation shall require subcontractor compliance with the statute cited in § 1260.420(b).

(2) All subcontracts, regardless of tier, which may involve shipment of hazardous materials or other regulated items shall require subcontractor compliance with the regulation cited in § 1260.420(c).

§ 1260.511 Closeout procedures.

The closeout of a grant is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by the grantee and NASA. Closeout procedures consist of the following steps:

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

(b) *Reports submission.* The administrative grant officer will ensure that the summary of research and all other final reports have been received by the appropriate NASA offices. Specifically:

(1) Summary of research (see §§ 1260.402 (d) through (f) and 1260.605(b)).

(2) Final report of inventions and subcontracts (see §§ 1260.409 and 1260.605(b)).

(3) Final Federal cash transactions report (see §§ 1260.407(a), 1260.603 and 1260.605(c)).

(4) Final property inventory (see §§ 1260.408(h), 1260.506(b), and 1260.604).

(c) *Reports certification.* The administrative grant officer will obtain from the recipients of all NASA reports, written certification that the above-noted reports have been satisfactorily completed. In reviewing the certifications, ensure the following:

(1) The grantee is required to immediately refund any balance of unobligated (unencumbered) cash that NASA has advanced or paid. NASA shall make prompt payment for any remaining allowable, reimbursable costs under the grant being closed out.

(2) Final audit of NASA grants normally occurs as a part of scheduled overall audits performed by the cognizant audit agency. Therefore, requests for audit of specific grants in conjunction with closeout are generally unnecessary and should be reserved for unusual circumstances. Unless the cognizant audit agency has performed a final audit prior to closeout of the grant, the administrative grant officer shall state in the closeout letter to the grantee that:

NASA retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from any subsequent audit.

(3) The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see § 1260.408 (f) through (h)).

(4) Upon administrative grant officer receipt of all four certifications from recipients of the summary of research and other final reports, a grant is considered to be administratively complete. A DD Form 1594 will be provided by ONR to the NASA grant officer for the file. Closeout may be cited as the date the administrative grant officer documents the file that all required actions have been satisfactorily completed, and that no further actions are necessary.

(d) *Prohibitions.* Forms, procedures, or requirements (regardless of modifications) applicable to contracts shall not be used during grant closeout unless otherwise authorized in this handbook. Grantees shall not be requested to complete forms or supply information other than discussed in § 1260.511(b), except in unusual situations.

(3) *Retention of documents.* The original or a signed copy of each grant, with supporting data, shall be retained by the installation, for audit purposes, for 3 years after the expiration date of the grant.

Subpart 6—Reports

§ 1260.601 Individual procurement action report (NASA Form 507).

The grant officer is responsible for submitting NASA Form 507 for all grant actions.

§ 1260.602 Committee on Academic Science and Engineering (CASE) report (NASA Form 1356).

For grants awarded to educational institutions, NASA Form 1356 is submitted with funded procurement requests. In the case of certain non-funded actions for educational institutions, the NASA Form 1356 is initiated by the grant officer.

§ 1260.603 Federal cash transactions report (SF 272).

The SF 272 shall be submitted by the grantee within 15 working days following the end of each Federal fiscal quarter, as a condition of receiving advance payments, in accordance with instructions to be provided by the financial management office of the Installation which issued the grant. Any questions regarding payment should be directed to the financial management officer of that Installation.

§ 1260.604 Inventory listings of equipment.

As provided in § 1260.408(h) of this part, an annual inventory listing of Government furnished equipment will be submitted by July 31 of each year. The listing shall include the information specified in § 1260.507(a)(1) and beginning and ending dollar value totals for the reporting period. Upon receipt of each annual inventory listing, the administrative grant officer will provide 1 copy of the NASA installation financial management officer and 1 copy to the NASA installation industrial property officer. A final inventory report of Government furnished equipment and grantee acquired equipment is due 30 days after the end of the grant, in accordance with § 1260.408(h). Upon receipt of the final inventory report, the administrative grant officer will provide 1 copy to the technical officer and 1 copy to the NASA Installation industrial property officer.

§ 1260.605 Performance reports, summaries of research, and other final reports.

(a) Three copies of a performance report, including a concise statement of the research accomplished during the report period, shall be submitted for every year of the grant (except the final year) and is due 60 days before the anniversary date of the grant. At the specific request of the technical officer, this requirement may be modified by use of the special condition entitled "Reports Substitution" (see § 1260.422(g)).

(b) By the expiration date of the grant, the grantee shall submit three copies of a summary of research which summarizes the results of the entire project. Citation of publications resulting from the research, or abstracts thereof, may serve as all or part of this summary of research. In addition, the grantee will report to NASA whether or not any inventions, required to be reported under the grant, have been made in the performance of work thereunder.

(c) A properly certified final Federal cash transactions report, SF 272, is required from the grantee for each grant as provided in § 1260.511(b)(3).

(d)(1) Failure to provide a required grant report can result in: the agency and the public being denied information about grant activities; agency officials having less information for making decisions based on the grant; grant closeout being delayed; and confidence being undermined that the grantee will follow requirements under other grants. Consistent with OMB Circular No. A–110, NASA does not withhold payment under grants, for the purpose of ensuring receipt of reports, until a grantee's failure to provide a required report indicates a need for withholding payment.

(2) Because NASA grants provide for advance payments, the circumstances under which NASA grant officers can withhold payment are limited. The grantee has an opportunity to be paid all of the funds before final reports are due. At this point, it is usually too late to withhold payment under the grant for overdue final reports. When a report is more than 90 days overdue, the NASA grant officer can include the special condition for withholding payment in the grant with the overdue report only if the grant is being supplemented with additional funds, and can also include the special condition in other grants that are being awarded or supplemented.

(3) To ensure receipt of reports and summaries of research from any grantee that has failed to comply with Federal reporting requirements for a period longer than 90 days, the NASA grant officer will take, but not to be limited to, the following action: when awarding a new grant or supplementing an existing grant, include the special condition at § 1260.422(h). The special condition instructs the financial management office to withhold from the last payment a dollar amount pending receipt of the satisfactorily completed summary of research and other final reports identified in § 1260.511(b). The NASA grant officer shall insert in the special condition a dollar amount for withholding that is not more than five percent of the dollar value of the first year of the grant.

(4) The grant officer may waive the withholding requirement for any grant when the grantee has taken corrective action that makes withholding unnecessary. To release for payment the amount withheld, the NASA grant officer shall use a memorandum substantially as shown in Exhibit C of the appendix to this part 1260.

§ 1260.606 Disclosure of lobbying activities (SF LLL).

(a) Grant officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Office for transmittal to the Director, Procurement Systems Division (Code HM).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the

Director, Procurement Policy Division (Code HP).

§ 1260.607 Debarment and suspension.

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

Appendix to Part 1260

BILLING CODE 7510-01-M

Exhibit A - Delegation of Administration
Figure 1 - General

NASA National Aeronautics and Space Administration — Letter of Contract Administration Delegation, General	1. NASA CONTROL NO.	2. RECEIVING OFFICE CONTROL NO.
3. TO:	4. FROM:	
5. PRIME CONTRACTOR OR SUBCONTRACTOR AND PLACE OF PERFORMANCE	6. CONTRACT NO. AND DATE	7. FACE VALUE
	8. CONTRACT TYPE	9. COMPLETION DATE

10. CONTRACT END ITEM OR SERVICE *(Describe briefly)*

11. ~~You are hereby authorized to act as my representative in the administration of this contract. The functions delegated to you for administration are those listed in FAR 42.302(a), excluding those functions listed in NFS 18-42.202(a)(1). Additional functions delegated~~
* ~~to you for administration are those functions listed in NFS 18-42.302. *(The attached NASA Form 1430A, if any, may require that certain functions be specifically withheld and/or that others be added.)*~~

12. You are further authorized, within the limits of the contract, to redelegate the functions delegated to you by par. 11 above. unless redelegation authority is specifically withheld on NASA Forms 1430A, attached hereto. Redelegation of functions to be performed on NASA installations, or NASA-controlled launch sites, will be directed to the NASA Procurement Officer of the installation concerned. Should you desire that the redelegated functions be performed by other than the NASA Procurement Office receiving the delegation, your letter of redelegation shall so state.

13. The Production Surveillance category requested is N.A. . *(Use only for delegations to D.O.D.)*

14. You are requested to provide the NASA Contracting Officer with copies of all communications relating to the administration of this contract that you consider significant.

15. Please acknowledge acceptance of this delegation by returning two signed copies of NASA Form 1431 *(attached)* to the NASA Contracting Officer within 5 days of receipt.

16. TYPED NAME OF CONTRACTING OFFICER	17. SIGNATURE OF CONTRACTING OFFICER	18. DATE

19. NASA PERSONNEL TO CONTACT WHEN NECESSARY

*11. You are hereby authorized to act as my representative in the administration of this grant. The functions delegated to you for administration are those listed in paragraph 3.A. of the Memorandum of Agreement between NASA and ONR for Grant Administration. *(The attached NASA Form 1430A, if any, may require that certain functions be specifically withheld and/or that others be added. On NASA Forms 1430, 1430A, and 1431, the terms "contract," "contractor," and "Contracting Officer" are to be read as "grant," "grantee," and "grant officer," respectively.*

NASA FORM 1430 OCT 89 PREVIOUS EDITIONS ARE OBSOLETE (OVERPRINT APR 1992)

Exhibit A - Delegation of Administration
Figure 2 - Property Administration and Plant Clearance

NASA National Aeronautics and Space Administration — Letter of Contract Administration Delegation, General	1. CONTRACT NO.	2. DELEGATION NO.

This form is to be used to provide special instructions to NASA Forms 1430 and 1432.

3. FUNCTIONAL AREA *(Enter applicable function area in this space, such as Contract Administration, Production Administration, Quality Assurance, etc. Use separate forms for each functional area delegated.)*

PROPERTY ADMINISTRATION AND PLANT CLEARANCE

4. SPECIAL INSTRUCTIONS

A. NASA property administration and plant clearance requirements generally correspond to DOD's. The differences, which are highlighted below, will require your special attention:

1. The grantee shall maintain property records and otherwise manage nonexpendable personal property utilized in the performance of this grant in accordance with the provisions of 14 CFR 1260.507. Check for compliance during system surveys of the records function.

2 Ensure all cases of loss, damage, or theft of NASA property are promptly investigated, adequately documented, and reported to the grant officer (14 CFR 1260.507(a)(4)). Ensure discoveries of unrecorded property, as well as losses, are investigated, documented, and reported to identify both the causes and necessary actions to prevent recurrence of the discrepancies.

3. Distribute copies of inventory listings (14 CFR 1260.604). Under no circumstances will Government property be disposed of without instructions from NASA.

4. Ensure all NASA identifications are removed or obliterated prior to disposition of property other than by return to NASA or reutilization on other NASA programs/contracts/grants.

5. NASA delegates approval authority for property acquisitions beyond those in the approved proposal budget (14 CFR 1260.408). Ensure that grantee procedures provide that such requests are forwarded to the administrative grant officer. ONR may telephonically obtain technical officer concurrence for property acquisition. ONR will fax approval to the grantee and mail a copy of the approval to the individual listed in Block 5 below. Check for compliance during system surveys of the acquisition function. Also, please note that NASA policy is to <u>not</u> furnish grantees property acquired from Government excess listings.

B. Provide the following data/documents to the individual listed in Block 5 below:

1. One copy of <u>each</u> system survey summary performed for this grantee.

2. Notification of all granting of relief of responsibility for lost, damaged, or destroyed property under this grant.

3. A letter or DD 1593 stating that all required property actions in 14 CFR 1260.511 have been completed.

5. NASA CONTACT DESIGNATED FOR THIS FUNCTION

a. NAME	b. PHONE

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Exhibit A - Delegation of Administration
Figure 3 - Close-Out

NASA National Aeronautics and Space Administration — Letter of Contract Administration Delegation, General	1. CONTRACT NO.	2. DELEGATION NO.

This form is to be used to provide special instructions to NASA Forms 1430 and 1432.

3. FUNCTIONAL AREA *(Enter applicable function area in this space, such as Contract Administration, Production Administration, Quality Assurance, etc. Use separate forms for each functional area delegated.)*

CLOSE-OUT

4. SPECIAL INSTRUCTIONS

(a) ONR will perform the grant officer functions set forth in 14 CFR 1260.511.

(b) ONR may authorize additional time for submission of reports as necessary and reasonable.

(c) ONR may perform a final desk review in lieu of a final audit by the cognizant agency.

(d) Provide the NASA grant officer a DD 1594 stating that the grant is administratively complete and that close-out is recommended. The accepted reports certifications (14 CFR 1260.511(c)) shall be attached. If property administration and plant clearance has been delegated, a copy of the letter or DD 1593 indicating completion of all required property actions shall be attached.

(e) A separate delegation for property administration and plant clearance has been made previously or accompanies this delegation. ____ YES. ____ NO.

(f) Names, titles and addresses of individuals and/or offices to contact for certifications regarding the reports in 14 CFR 1260.511(b):

Summary of research:

Final report of inventions
and subcontracts:

Final financial report:

5. NASA CONTACT DESIGNATED FOR THIS FUNCTION

a. NAME	b. PHONE
(grant officer)	

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BILLING CODE 7510-01-C

Exhibit A—Delegation of Administration

Figure 4—Memorandum of Agreement

(DRAFT August 25, 1992) Memorandum of Agreement Between the National Aeronautics and Space Administration and the Office of Naval Research for Grant Administration Services to be Provided to NASA by ONR

1. Purpose.

This agreement between the Office of Naval Research (ONR) and the National Aeronautics and Space Administration (NASA) establishes policies and procedures under which ONR will provide grant administration services in support of NASA grants. ONR support is provided on a reimbursement basis in accordance with the NASA-DOD Agreement for Performance of Contract Administration and Contract Audit Services.

2. Authority.

Section 203(b) of the National Aeronautics and Space Act of 1958, P.L. 85-568 (72 Stat 429; 42 U.S.C. 2473(b)(6)) and the Economy Act of 1932, as amended, 31 U.S.C. 1535 et seq.

3. Scope.

A. This agreement includes, but is not limited to, the following categories of support to be provided by ONR when requested by NASA in a letter of delegation of authority on individual grants:

1. Monitor grantee payment requests and fund expenditures.
2. Perform property administration and plant clearance.
3. Review and approve or disapprove grantee requests to acquire equipment or other property.
4. Review and approve or disapprove grantee requests to incur travel costs exceeding budget limitations.
5. Maintain surveillance of grantee procurement, financial, property management and internal control systems.
6. Ensure timely submission of required reports.
7. Conduct administrative close-out procedures.
8. Quality assurance.

B. The following functions are not included in the scope of this agreement, as they are retained by NASA as a matter of policy:

a. Payment
b. Consent to the placement of subcontracts or subawards.
c. Suspension, termination or revocation.
d. Technical monitoring and oversight.

C. Delegations under individual grants may refer to this agreement to obtain services in 3.A. above, or with the concurrence of the cognizant ONR representative, may cite other specific functions to be performed, depending upon the circumstances. Delegations of authority must be accepted in writing and returned to the NASA grants officer to support reimbursable billings. The ONR representative will refer all disagreements with the NASA technical officer to the NASA grant officer for decision.

4. Administrative Guidance. Grant administration functions will be performed in accordance with the terms of NASA grants and ONR procedures unless otherwise specifically provided in letters of delegation. Enclosure contains additional guidance on the services to be performed in each support category. ONR and NASA personnel will maintain regular communication on grant management.
5. Documentation. NASA will furnish to ONR copies of the grant (including the budget), correspondence between NASA and the grantee, and any special publications or documents required to be used in the administration of a grant not otherwise available to ONR.
6. This Agreement shall take effect upon the latest signature date below, and shall remain in effect through January 31, 1995, unless sooner terminated by either party upon thirty days written notice.

Charles R. Paoletti, Director, University Business Affairs, Office of Naval Research (Acting), Date:

R. Scott Thompson, Director, Contract Management Division, NASA Headquarters, Date:

Enclosure

Exhibit A—Delegation of Administration

Additional Guidance for Categories of Support

MOA *Reference and Support Provided*

3.A.1. Monitor grantee payment requests and fund expenditures. Periodically, as part of on-site reviews, examine payment requests and fund expenditures to assure that excess funds are not being obtained, performance is generally in accordance with grant budget projections, and that expenses appear to be reasonable and allowable under relevant cost principles.

3.A.2. Perform property administration and plant clearance. Oversee grantee property control and plant clearance systems and procedures, including such tests as are necessary to insure the adequacy of these systems. Ensure that all cases of loss, damage, or theft of NASA property are promptly investigated, documented, and reported to the Grants Officer in a timely manner. Monitor, and assure submission of annual inventory listings of government furnished equipment in the custody of the grantee as required by the grant provision "Equipment and Other Property". Oversee the disposition of government furnished equipment after expiration of the grant.

3.A.3. Review and approve or disapprove grantee requests to acquire equipment or other property, after coordinating as necessary with NASA technical or grants personnel, and observing the relevant restrictions in the NASA Grant Handbook.

3.A.4. Review and approve or disapprove grantee requests to incur travel costs exceeding budget limitations, after coordinating as necessary with NASA technical or grants personnel, and observing the relevant restrictions in the NASA Grant Handbook.

3.A.5. Maintain surveillance of grantee financial, procurement, and internal control systems. Individual delegations of authority may call for more specific attention to selected issues, if determined necessary by the NASA grant officer.

3.A.6. Ensure timely submission of required reports. In particular, NASA will use performance reports as an important part of decisions relating to the grant. Timely submission is essential to orderly management of the grant program.

3.A.7. Conduct administrative closeout procedures. The NASA grant officer will contact ONR to initiate closeout procedures. ONR will assure completion of all required reports and disposition of any residual Government property, notifying the NASA grant officer when administrative functions have been completed.

3.A.8. Quality Assurance. When quality assurance functions are required, a statement of quality requirements will be included in individual letters of delegation.

The following normal time periods are established for the routine performance of the above functions. Significant differences from these expected times should be coordinated between the ONR grant administrator and the NASA grant officer. Times are expressed in working days.

3.A.1. In accordance with schedules established by ONR for the institution. For grantees not regularly scheduled by ONR, as agreed by ONR and NASA representatives.

3.A.2. Reports of loss, damage, or theft of property within 7 days of the incident. Annual property inventory prior to August 15 of each year.

3.A.3. 7 days from receipt by ONR.

3.A.4. 7 days from receipt by ONR.

3.A.5. In accordance with schedules established by ONR for the institution. For grantees not regularly scheduled by ONR, as agreed by ONR and NASA representatives.

3.A.6. Followup within 5 days for reports not timely submitted.

Exhibit B—Formats

Figure 1

National Aeronautics and Space Administration—Research Grant

1. To:
2. Grant Number:
3. Supplement:
4. Effective date:
5. Expiration date:
6. For research entitled:
7. Under the direction of (Principal Investigator):
8. *Award History*
   Previous amount: $
   This action: $
   Total to date: $
   Funding History
   Previous obligation: $
   This action: $
   Total obligation to date: $
9. NASA Procurement Request Number:

PPC Number:
Appropriation:
10. Points of Contact (name of office or individual, address, and telephone number):
Technical officer:
Administration:
Payment:
Grant negotiator:
11. This grant is awarded under the authority of 31 U.S.C. 6301, et seq., and is subject to all applicable laws and regulations of the United States in effect on the date this grant is awarded, including but not limited to 14 CFR Part 1260 (Grants and Cooperative Agreements).
12. Applicable statement, if checked:
_____ The Federal Demonstration Project General Terms and Conditions and the NASA Agency-Specific Requirements apply to this grant.
_____ No change is made to existing provisions or special conditions.

UNITED STATES OF AMERICA
(signature and date)

(name), Grant Officer
Applicable enclosure(s), if checked:
_____ Provisions
_____ Special conditions
_____ Budget summaries and details

Figure 2

National Aeronautics and Space Administration—Cooperative Agreement

1. To:
2. Coop. Agreement No.:
3. Supplement:
4. Effective date:
5. Expiration date:
6. For research entitled:
7. Under the direction of (Principal Investigator):
8. *Award History*
Previous amount: $
This action: $
Total to date: $
Funding History
Previous obligation: $
This action: $
Total obligation to date: $
9. NASA Procurement Request Number:
PPC Number:
Appropriation:
10. Points of Contact (name of office or individual, address, and telephone number):
Technical officer:
Administration:
Payment:
Grant negotiator:
11. This cooperative agreement is awarded under the authority of 31 U.S.C. 6301, et seq., and is subject to all applicable laws and regulations of the United States in effect on the date this cooperative agreement is awarded, including but not limited to 14 CFR Part 1260 (Grants and Cooperative Agreements).
12. Applicable statement, if checked:
_____ No change is made to existing provisions or special conditions.

UNITED STATES OF AMERICA
(signature and date)

(name), Grant Officer
Applicable enclosure(s), if checked:
_____ Provisions
_____ Special conditions
_____ Budget summaries and details

Figure 2

Provisions

The following provisions are incorporated by reference:

Full text reference	Title	Date
§ 1260.402	Publications and Reports.	Aug. 1992.
§ 1260.403	Extensions	Jun. 1992.
§ 1260.404	Suspension or Revocation.	Jun. 1992.
§ 1260.405	Change in Principal Investigator or Scope.	Feb. 1992.
§ 1260.406	Allowable Costs	Jun. 1992.
§ 1260.407	Financial Management.	Jun. 1992.
§ 1260.408	Equipment and Other Property.	Jun. 1992.
§ 1260.409	Patent Rights-Retention by the Grantee.	Feb. 1992.
§ 1260.410	Rights in Data	Feb. 1992.
§ 1260.411	Security	Jun. 1992.
§ 1260.412	Civil Rights	Feb. 1992.
§ 1260.413	Subcontracts	Jun. 1992.
§ 1260.414	Clean Air-Water Pollution Control Acts.	Mar. 1992.
§ 1260.415	Procurement Standards.	Feb. 1992.
§ 1260.416	Interest Bearing Accounts.	Jan. 1992.
§ 1260.417	Debarment and Suspension and Drug-Free Workplace.	Feb. 1992.
§ 1260.418	Foreign National Employee Investigative Requirements.	May 1992.
§ 1260.419	Restrictions on Lobbying.	Apr. 1990.
§ 1260.420	Travel and Transportation.	Jun. 1992.
§ 1260.421	Program Income	Jun. 1992.

(Source: 14 CFR Part 1260. Provisions incorporated by reference have the same force and effect as if they were given in full text. Copies of Code of Federal Regulation volumes are available in many libraries and for purchase from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Copies of OMB Circulars referenced in the provisions may be obtained from the Office of Administration, Publications Unit, room G-236, New Executive Office Building, Washington, DC 20503. An index of existing Circulars is contained in 5 CFR 1310.)

Figure 2

Budget Summary

From ________ to ________

	A	NASA use only	
		B	C
1. Direct Labor (salaries, wages, and fringe benefits)			
2. Other Direct Costs:			
a. Subcontracts			
b. Consultants			
c. Equipment			
d. Supplies			
e. Travel			
f. Other			
3. Indirect Costs			
4. Other Applicable Costs			
5. Subtotal—Estimated Costs			
6. Less Proposed Cost Sharing (if any)			
7. Carryover Funds (if any)			
a. Anticipated amount			
b. Amount used to reduce budget			
8. Total Estimated Costs			XXXXX
APPROVED BUDGET	XXXXX	XXXXX	

Instructions

1. Provide a separate budget summary sheet for each year of the proposed research.

2. Grantee estimated costs should be entered in Column A. Columns B and C are for NASA use only. Column C represents the approved grant budget.

3. Provide in attachments to the budget summary the detailed computations of estimates in each cost category, along with any narrative explanation required to fully explain proposed costs.

ADDITIONAL INSTRUCTIONS ON REVERSE

Specific Costs

1. Direct Labor (salaries, wages, and fringe benefits). Attachments should list number and titles of personnel, amount of time to be devoted to the grant, and rates of pay.

2. Other Direct Costs:

a. Subcontracts—Attachments should describe the work to be subcontracted, estimated amount, recipient (if known), and the reason for subcontracting this effort.

b. Consultants—Identify consultants to be used, why they are necessary, time to be spent on the project, and rates of pay (not to exceed the equivalent of the daily rate for CS-18 in Federal service, excluding expenses and indirect cost.)

c. Equipment—List separately and explain the need for items of equipment exceeding $1,000. Describe the basis for the estimated cost. General purpose, non-technical equipment is not allowable as a direct cost to NASA grants unless specifically approved by the grant officer.

d. Supplies—Provide general categories of needed supplies, the method of acquisition, estimated cost, and the basis for the estimate.

e. Travel—List proposed trips individually, describe their purpose in relation to the grant, provide dates, destination, and number of travellers where known, and explain how the cost for each was derived.

f. Other—Enter the total of any other direct costs not covered by 2.a. through 2.e. Attach an itemized list explaining the need for each item and the basis for the estimate.

3. Indirect Costs—Identify indirect cost rate(s) and base(s) as approved by the cognizant Federal agency, including the effective period of the rate. Provide the name, address, and telephone number of the Federal agency and official having cognizance over such matters for the institution. If unapproved rates are used, explain why and include the computational basis for the indirect expense pool and corresponding allocation base for each rate.

4. Other Applicable Costs—Enter the total of any other applicable costs. Attach an itemized list explaining the need for each item and the basis for the estimate.

5. Subtotal-Estimated Costs—Enter the sum of items 1., 2.a. through 2.f., 3., and 4.

6. Less Proposed Cost Sharing (if any)—Enter the amount proposed, if any. If cost sharing is based on specific cost items, identify each item and amount in attachment.

7. Carryover Funds (if any)—Enter the dollar amount of any funds that are expected to be available for carryover from the prior budget period. Identify how the funds will be used if they are not used to reduce the budget. NASA officials will decide whether to use all or part of the anticipated carryover to reduce the budget. Not applicable to 2nd-year and subsequent-year budgets submitted for the award of a multiple year grant.

8. Total Estimated Costs—Enter the total after subtracting items 6. and 7.b. from item 5.

Exhibit C—Release of Withholding

To: Financial Management Office
From: Grant Officer
Subject: Release of Withholding Under Grant Number ________

The summary of research and other final reports have been received from the grantee, (*name of grantee*). The Financial Management Office may release for payment the amount withheld under the special condition entitled "Withholding."

(Signature and name)

[FR Doc. 92-25110 Filed 10-19-92; 8:45 am]
BILLING CODE 7510-01-M

federal register

Tuesday
October 20, 1992

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commission

24 CFR Part 203

Mutual Mortgage Insurance and Rehabilitation Loans; Miscellaneous Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-92-1509; FR-2853-F-02]

RIN 2502-AF02

Mutual Mortgage Insurance and Rehabilitation Loans; Miscellaneous Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published April 25, 1991 (56 FR 19212) describing miscellaneous amendments to current regulations governing actions by mortgagees with respect to insured mortgages in default. The purpose of the rule is to improve the efficiency of the Single Family Mortgage Insurance Program.

EFFECTIVE DATE: November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Director, Single Family Servicing Division, room 9178, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708-1672 or, for hearing and speech-impaired, (202) 708-4594. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 25, 1991, the Department published a proposed rule for public comment containing various amendments to regulations governing FHA-insured mortgages for single family homes, authorized by title II of the National Housing Act (the Act). Under the FHA program, home mortgages are insured, and reserve funds provide the money to pay insurance claims to lenders upon default on the mortgages. The funds are replenished by insurance premiums paid by mortgagors to obtain the insurance, and by income from the investment of proceeds from the sales of homes that HUD acquires upon payment of insurance claims to the lenders.

This rule makes final the April 25, 1991 rule, which specifically amended regulations governing mortgagees' obligations with regard to foreclosures, claims for insurance benefits, and preservation and maintenance of properties upon default by mortgagors. The purpose of the rule is to improve the efficiency of the program, thereby protecting the FHA insurance funds and assuring the availability of the program for use by future homebuyers. The Department received approximately 70 comments from lenders, attorneys, title insurance companies, and industry associations. After analyzing the public comments, the Department has made changes to the rule where appropriate.

II. Discussion of Public Comments and Responses

1. Commencement of Foreclosure Action Upon Default (24 CFR 203.355, 203.377, and 203.606

The Department proposed amending 24 CFR 203.355 to shorten the time within which to commence foreclosure (or obtain a deed in lieu) from one year to six months from the date of default and to shorten the time with regard to vacant or abandoned property from 60 days to 30 days after the date the property is discovered, or should have been discovered, to be vacant or abandoned. Where FHA time limits cannot be met because of State law requirements, the proposed rule would have shortened the time to begin foreclosure from 60 days to 30 days.

Fifty-two commenters addressed this issue. They generally objected to both the six-month limitation for the initiation of foreclosure after default and the 30-day limitation following vacancy or removal of a State prohibition. The Department specifically requested that commenters address any reasons that the six-month deadline could not reasonably be met, and the commenters identified, among other reasons, pre-foreclosure requirements and compliance with the HUD assignment program, administrative matters, State law requirements regarding notice, and the desire to encourage workout or forbearance agreements with mortgagors.

Some commenters agreed with the reduction in time because it preserves the property pending conveyance. Others, including the Mortgage Bankers Association, stated that a nine-month limitation, which is similar to the time permitted by private mortgage insurers, would be acceptable.

Commenters were unanimous in their objection to the requirement that foreclosure be initiated with 30-days after discovery that the property is vacant or abandoned or after removal of the State prohibition or bankruptcy stay. They stated many of the same pre-foreclosure requirements identified above as reasons. They also claim that, in vacancy cases, it is difficult to determine whether the property is vacant or abandoned, particularly in tenant-occupied properties that may be vacant for 30 days between tenancies. The commenters favored retention of the 60-day limitation.

The Department is impressed with the arguments of the commenters, and agrees with those who suggested that a nine-month limitation is reasonable. Therefore, the final rule provides that foreclosure must be initiated within nine months after default. This provides ten months from the due date of the mortgagor's last unpaid installment before foreclosure must be initiated.

The Department is taking this opportunity to clarify a misunderstanding, which was evident from comments, regarding the time frame for initiating foreclosure as related to the assignment program. Some commenters believed that the assignment process had to be completed within the proposed six-month time frame, making the deadline impossible to meet. Mortgagees may issue the notice required by 24 CFR 203.652 (Assignment Letter No. 2 or 3) as late as 20 days before the expiration of the time frame required in 24 CFR 203.355, which under this final rule is nine months.

The Department also agrees with commenters on the difficulties of initiating foreclosure within 30 days after discovery of a vacancy or after release of State prohibition or bankruptcy stay. The final rule establishes a 60-day time frame to initiate foreclosure after the discovery of a vacancy or abandonment, or after the property has been vacant for 60 days, whichever is later. The final rule also retains the 60-day time frame in the existing regulations for initiating foreclosure after release of State prohibition or bankruptcy stay.

The arguments that it is difficult to determine whether the property is vacant or abandoned or that the property may be between tenancies should not affect a decision to initiate foreclosure. A vacant property is vulnerable to potential damage, even between tenancies. Property which is both vacant and subject to a defaulted mortgage is particularly vulnerable, whether or not it has been abandoned. The provision requiring foreclosure of defaulted mortgages on vacant or abandoned mortgages within a specific time frame will be retained, but the time frame is extended to 60 days after discovery.

2. Completion of Foreclosure and Conveyance to the Secretary (24 CFR 203.356 and 203.359)

Under 24 CFR 203.356, mortgagees are required to give written notice to HUD within 30 days after instituting foreclosure proceedings, and to exercise reasonable diligence in completing the proceedings. In the April 25, 1991 proposed rule, the Department proposed to extend the requirement to exercise reasonable diligence to acquiring title to and possession of the property once the foreclosure proceedings have been completed. Commenters did not object to this proposal, but requested that the mortgage banking industry be consulted in establishing reasonable diligence time limits for each State. Some commenters were concerned because they do not always receive timely notice in those jurisdictions where the foreclosure deed is recorded by a sheriff or other public official. Commenters also suggested that "foreclosure deed" be defined for those States where the term does not have a clear meaning.

The Department agrees with the commenters that the industry should be consulted in establishing reasonable diligence time limits, and will take steps to do so. Additionally, the Department will define "foreclosure deed" for those States where the term does not have a clear meaning. However, since these issues do not affect the extension of the reasonable diligence requirement to acquiring title to and possession of the property, as proposed, the final rule is unchanged from the proposed rule.

3. Repair of Damage and Preservation of Property by Mortgagee (24 CFR 203.378 and 203.379)

Section 136(a) of the Department of Housing and Urban Development Reform Act of 1989 amended section 204(a) of the Act to require mortgagees, as a condition of the receipt of insurance benefits, to maintain or assure the maintenance of the property while it is in the possession of the mortgagee. The Department interpreted this provision as congressional intent to strengthen HUD's position with regard to property conveyed in an unrepaired condition, and proposed amending the regulations on damaged property to require mortgagees to be responsible for any damage, of whatsoever nature, to the property while the property is in the possession of the mortgagee.

The comments on this issue were unanimous in their objection to the proposal. They stated that this proposal shifted the risk of damage, particularly vandalism, from HUD to mortgagees. They argued that Congress did not intend this result in enacting section 136(a).

Many mortgagees questioned when property comes into their possession. Those who recognized the definition in § 203.379a(b) questioned the meaning of "should have been discovered". Several other commenters questioned the distinction between "vacant" and "abandoned," and were concerned about the possibility of being accused of trespass if the property is only vacant, stating that it would be difficult for an inspector to determine which applies. They also pointed out that the property may be vacant because it is between tenancies, and therefore may only appear to be abandoned.

There was strong objection to holding the mortgagee responsible if the mortgagee was not at fault and has taken appropriate protective action. The commenters argued that a mortgagee cannot adequately protect against most vandalism. Some mortgagees suggested that, under the proposed policy change, lenders might refuse to make loans in inner cities and high vandalism areas, causing such areas to be "red lined."

All mortgagees objected to the termination of the insurance contract because of failure to meet repair time requirements.

Since mortgagees are currently responsible for damage to property under most circumstances while the property is in their possession, the effect of the proposed rule would be to extend those circumstances to include damage such as that caused by vandalism and frozen pipes, even when the mortgagee was diligent in taking protection and preservation actions. Upon consideration of the comments on the proposed changes, the Department agrees that the final rule should be modified, with regard to mortgages insured after the effective date of the rule, to allow the mortgagee reimbursement for repairs required by the Secretary in an amount not to exceed HUD's estimate of the damage, less any insurance recovery, where the property damage was from causes other than fire, flood, earthquake, or tornado; and the property damage did not result from the mortgagee's failure to take reasonable action to protect and preserve the property.

In addition to the existing requirement to obtain approval to convey properties damaged under most circumstances, the final rule, with regard to mortgages insured after the effective date of this rule, will require mortgagees to provide notice to the Secretary for all remaining types of damage before conveyance. In effect, in all cases, regardless of whether the mortgagee was responsible for the damage or whether the mortgagee is eligible for reimbursement of the repairs, the mortgagee must notify the Secretary prior to conveying any damaged property.

If the mortgagee fails to provide notice, HUD will either reconvey the property to the mortgagee under the provisions of §§ 203.363 and 203.364, or require the mortgagee to reimburse the Secretary for the Secretary's estimate of the cost of repair or any insurance recovery, whichever is greater. By providing advance notice, HUD will have the opportunity to decide in every instance (which is not currently the case) whether to accept damaged property or to require that the mortgagee repair the damage before conveyance. In those cases where the mortgagee is eligible for reimbursement for the cost of repairs, such costs incurred by the mortgagee will be limited to HUD's estimate, and the mortgagee will be responsible for any costs incurred above HUD's estimate.

With regard to commenters' concerns about when a mortgagee has possession, the statute does not identify the time at which the mortgagee takes possession of the property. The regulation supplies this date as the date the mortgagee first discovers the property is vacant or should have discovered it to be vacant by making required inspections.

The term "damage" should not cause the problems feared by some commenters, since § 203.378(b) excludes waste committed by the mortgagor from the mortgagee's responsibility. There may be some questions about whether damage occurred before or after the mortgagee took possession, but this issue can be resolved by a properly performed inspection.

The Department also agrees with the commenters that termination of the insurance contract 90 days after conveyance is unnecessarily harsh, and the proposed § 203.317a has been dropped from the final rule. On reconsideration, the reduction of insurance benefits and the mortgagee's liability for property expenditures, as provided in §§ 203.363 and 203.364, should be sufficient to encourage prompt repairs. If the mortgagee does not accept the property and fails to make the necessary repairs, HUD may refuse to pay the claim.

4. Deficiency Judgments (Section 203.369)

The proposed rule removed the specific criteria in § 203.369 for determining which mortgagors may be pursued for deficiency judgments, and provided that *any* defaulting mortgagor may potentially be pursued for a deficiency judgment. Some commenters were of the opinion that the scope of the deficiency judgment regulations should not be broadened, but they did not allege that the proposal would be unfair, irrational or burdensome. The Department continues to believe that a case-by-case determination is a fair and rational method for selecting mortgagors who should be pursued for deficiency judgment, and the proposed rule will be made final. The Department will rely primarily on whether the mortgagor retains significant assets and can be expected to discharge all or part of a deficiency judgment within a reasonable time, but will also consider other factors, such as State laws and cost-effectiveness, as well.

Several mortgagees commented that the mortgagees should be paid for their administrative costs but did not specify what actions with regard to pursuit of deficiency judgments will add to their costs. The Department is of the opinion that nearly all additional activity is conducted by an attorney and an additional fee is provided for this. Additionally, those fees and costs are reimbursed on a basis of 100 percent so that the mortgagee bears none of the cost.

5. Title Defects and Satisfactory Title Evidence (24 CFR 203.359, 203.366, 203.387, 203.391, and 203.402)

The proposed rule would have required title defects to be corrected by a mortgagee within 30 days after notification of a defect. If the defect was not corrected within 30 days, the proposed rule would have required the mortgagee to pay HUD's holding costs until the defect was corrected or HUD reconveyed the property. In addition, no costs borne by the mortgagee for correcting defects in the title would be reimbursed. If the title defect was not corrected within 90 days from reconveyance, the insurance contract would be terminated.

A total of 51 commenters, representing mortgagees, attorneys, and title companies opposed these provisions. They argued that only the most simple title defects can be cured within 30 days, and that a good number require 90 days. Mortgagees claim that they have no control over the time taken by attorneys and title companies to take the necessary action to cure defects. They also argued that they should not be required to pay HUD's holding costs since they did not cause the defects. Title companies stated that the time limitation prevents them from curing defects through litigation or other time-consuming means, should they decide to take such actions under the title insurance contract. Finally, the commenters strongly objected to the provision to terminate the insurance contract after the 90-day period.

The Department was impressed by commenters' arguments that 30 days is an insufficient time within which to correct title defects, and the final rule has been changed to allow 60 days. However, the Department does not believe that it should bear the costs of holding the property or correcting a defect that should have been corrected before conveyance. The final rule provides for reductions in the claim payments in the form of debenture interest curtailments and restrictions on the payment of certain expenses, rather than termination of the insurance contract.

Under the final rule, where a mortgagee conveys defective title, HUD will allow the mortgagee 60 days from the date of HUD's notice to correct the title defect. If the defect is not corrected within the 60 days, the mortgagee will be required to reimburse HUD for its holding costs as well as interest on the total claim paid. Where a mortgagee misses HUD's time frame to convey and delays conveyance in order to correct title, HUD will curtail debenture interest and the mortgagee will not be eligible to claim protection and preservation expenses incurred after the date the property should have been conveyed to HUD.

Commenters also objected to the removal of § 203.387, which provides that title and title evidence are considered satisfactory if they are acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is located. HUD explained that the determination of whether title and title evidence are satisfactory is one that should be made by the Secretary rather than delegated to private parties who may have an interest at stake. Commenters are concerned that untrained field staff will refuse to accept titles that the industry finds acceptable and that title rejections will increase. The Department has decided to retain the regulation, but has added language in § 203.387 to indicate that in cases of disagreement the Secretary will make the final decision, using objective sources, whether title and title evidence are satisfactory and acceptable.

6. Termination of the Insurance Contract

The proposed rule would have added a provision (§ 203.317a) to the regulations to provide that the contract of insurance would be canceled if the mortgagee failed to meet the time limitations for correcting a defective title and repairing damaged property. The commenters strongly objected to this provision, with some arguing that the insurance contract should be terminated only where it can be proved that the mortgagee knowingly and willfully violated regulations. Others suggested that the provision would affect the number of lenders participating in the FHA program and would increase the cost of FHA insurance to consumers. As indicated earlier in the preamble discussions on damaged property and title defects, the Department has removed this proposal from the final rule, as well as all references to termination in other sections. The insurance fund will be adequately protected by other steps taken in the rule, discussed earlier, with regard to curtailment of debenture interest, reimbursement of costs, and, upon reconveyance, reimbursing insurance benefits received.

7. Noncompliance With Regulations (§§ 203.363 and 203.364)

The Department proposed amendments to provide that, upon reconveyance for failure to comply with the regulations, a mortgagee must reimburse the Secretary's daily costs of holding the property, based on the Secretary's estimate of the taxes, maintenance, administrative expenses, and lost investment income caused by the inability to dispose of the property. In addition, the mortgagee would not be reimbursed for any expenses incurred by it in connection with the property nor paid any debenture interest after the date of initial conveyance.

Generally, mortgagees did not object to the reconveyance of property because of noncompliance with regulations, although there was some concern that field offices may apply the remedy harshly or incorrectly. The major objection to the proposal involved an interpretation of the expenses imposed on the mortgagee. Some mortgagees questioned what costs were involved in "administrative expenses" and "loss of investment income," and objected to making the mortgagee responsible for taxes and other costs that HUD would pay if the property is not reconveyed. The commenters also objected to basing these charges on estimates.

The Department believes that debenture interest should not be paid to a mortgagee after reconveyance for noncompliance with the regulations, since reconveyance occurs because of an error that should have been corrected by the mortgagee before conveying the property to the Secretary. The final rule provides that the mortgagee must reimburse the Secretary for any expenses incurred by the Secretary from the time the mortgagee improperly conveyed the property until reconveyance by the Secretary.

The final rule provides that, in cases where HUD reconveys the property to the mortgagee, the mortgagee will be required to reimburse HUD for its holding costs from the date the deed to the Secretary was filed for record to the date of reconveyance, the full amount of insurance benefits received, and interest on the amount of insurance benefits from the date the benefits were paid to the date they are refunded at an interest rate set in conformity with the Treasury Fiscal Requirements. In cases where the mortgagee reapplies for mortgage insurance benefits following its reconveyance of the property to the Secretary, the mortgagee will not be reimbursed for any expenses incurred in connection with the property after its reconveyance from HUD, nor be paid any debenture interest accrued after the date of the original conveyance to HUD. In addition, a deduction from the claim for insurance benefits will be made for any reduction in the Secretary's estimate of the value of the property occurring from the time of reconveyance by the Secretary to the time of reapplication by the mortgagee.

The Department uses a nationwide average of its daily holding costs, which include property taxes, maintenance and operating expenses for the property, and administrative expenses, because it does not have a cost-effective method of computing the total actual expenses, including administrative expenses through the date of reconveyance, in every locality. Administrative expenses currently includes only salaries. The Department does not believe these daily holding costs differ significantly from the holding costs that would be incurred by the mortgagee had the property not been prematurely conveyed to the Secretary.

HUD agrees with the commenters that "loss of investment income" should not be included in these daily holding costs because of the difficulty in estimating that element of the costs. Rather, the final rule has been changed to require the mortgagee to pay to HUD the current Federal rate of interest on the full amount of the insurance benefits received, from the date the insurance benefits were paid to the mortgagee to the date the mortgagee refunded the insurance benefits.

8. Review of Claims (Section 203.365)

The Department proposed amending its regulations on documents and information required to be submitted by a mortgagee when claiming insurance benefits to comport with current practice and requirements. Section 203.365, as proposed, requires mortgagees to maintain a claim file containing supporting documentation of the information for three years after a claim has been paid, and to give HUD access to the claim file at any time during the three-year period, or face withdrawal of approved-mortgagee status, debarment, or immediate suspension of all claim payments. The rule would also authorize the Department to use statistical sampling in selecting claims to be reviewed and in determining any overpayments. (The identification of insurance benefit underpayments (funds due the mortgagee) for any reason are the responsibility of the mortgagee, and any adjustments must be made only through the supplemental claim process.)

Comparatively few comments were received on this amendment. There was some objection to the requirement that claim files be made available in 24 hours, particularly where files are maintained off-site or where the number of files requested is large. There were also several requests for more specificity on what documents must be retained and how long after an audit they must be retained. Several commenters suggested that there should be a more definitive statement of the statistical sampling procedure, including methodology, confidence level, correlation technique, and appeal procedure.

The documents to be retained and the time for retention are specified in § 203.365(c) of the final rule. The three-year maintenance period and the 24-hour availability requirement are not new requirements. The rule establishes in the regulations a long-standing Departmental policy and practice. The final rule on this issue has not been changed, except to clarify that claim files relating to an unresolved or ongoing claim review must be maintained until final resolution of the review.

The Department agrees that a more definitive statement on the statistical sampling is desirable, but the regulation is not an appropriate vehicle for this explanation. Further elaboration of the procedure and methodology will be provided in handbook or mortgagee letter form.

An amendment to § 203.365 was also proposed to provide that the mortgagee furnish the recording authority with sufficient information so that the original deed can be sent to HUD by the recording authority, rather than the current rule that mortgagees forward the deed to HUD when received from the recording authority. A number of commenters objected to this provision, stating that the change would create an uncontrollable situation, resulting in lost deeds. The Department agrees, and has removed this provision from the final rule.

9. Notice of Transfer of Servicing (Section 203.502)

The proposed rule would have amended § 203.502 to require that, when servicing of a mortgage is transferred to another mortgagee, the mortgagee or servicer to whom it is transferred (transferee) notify HUD within 15 days of the transfer. The change was to bring the regulation into conformity with HUD's Mortgage Record Change 92080 form, which states the time as 15 days. However, the amendment also changed the party responsible for the notification from the mortgagee effecting the transfer (seller) to the transferee.

Several commenters pointed out that the effect of this change would be a "dual notification" system, since § 203.431 of the current regulations already require the seller to notify HUD within 15 days. HUD agrees, and § 203.502 in the final rule has been changed to provide that the seller notify HUD within 15 days, consistent with § 203.431.

10. Other Changes

The final rule also revises § 203.402 regarding the regulatory limitation on the amount a mortgagor may receive for executing a deed in lieu of foreclosure and thereby providing full reimbursement to the mortgagee of the actual amount paid to the mortgagor as consideration for executing a deed in lieu.

HUD may accept title to property secured by HUD-insured loans in default either through a foreclosure action or by accepting a deed in lieu of foreclosure. The latter action includes conveyances from mortgagees who have acquired title from the mortgagor by taking a deed in lieu of foreclosure. Costs are incurred in both procedures, but taking title by accepting a deed in lieu is less costly than a foreclosure and is a simpler, faster procedure. Costs associated with a foreclosure action can be several thousand dollars more than the costs for accepting a deed in lieu, and, in addition, the mortgagor is left with a blemished credit report.

In addition, because acquisition of title to property by accepting a deed in lieu of foreclosure is a faster procedure, benefits inure to the Department in the form of reduced acquisition, protection, preservation and interest costs. Specifically, the mortgage insurance claim is paid earlier, the mortgagee is responsible for the condition of the property for a shorter time period, the property may be disposed of at an earlier date, and the debenture interest to be paid is calculated over a shorter period of time.

Under the current § 203.402(f), the dollar amount that may be paid to the mortgagor as consideration for executing a deed in lieu may not exceed $200. This final rule revises § 203.402(f) by removing the sentence that limits the payment to $200. Additionally, a new paragraph (p) is being added to § 203.402 providing that the amount paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure will be set by the Secretary. Expressly granting the Secretary the authority in the regulation to establish the amount of consideration will allow the Secretary to change that amount as circumstances dictate.

The change will also result in full reimbursement to the mortgagee of the amount paid to a mortgagor as consideration for executing a deed in lieu. As currently written, § 204.402(f) not only caps the consideration at $200, but also limits the reimbursement to the mortgagee to two-thirds of the actual payment. By removing the provision governing the mortgagor's consideration for executing a deed in lieu, the two-thirds reimbursement limitation no longer will be acceptable to the deed in lieu consideration fee, because only those fees listed in § 203.402(f) are subject to the two-thirds reimbursement limitation.

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public participation is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1.) The Department finds that good cause exists to publish the amendment to § 203.402(f) and the addition of § 203.402(p), as discussed in this section, for effect without first soliciting public comment, in that the prior public procedure is unnecessary. These amendments are for the purpose of encouraging use of the deed in lieu of foreclosure procedure and do not have any adverse impact on either the mortgagor or the mortgagee.

III. Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by President Ronald Reagan on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to lenders and do not impinge upon the relationship between the Federal government and State and local governments. To the extent State and local law is relevant to the requirements of the rule, those laws are followed.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The rule governs the actions of mortgagees with respect to insured mortgages in default. Any effect on the family would likely be indirect and insignificant.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it's rule will not have a significant economic impact on a substantial number of small entities, because the purpose of the program is to protect lenders from loss by providing insurance on home mortgages.

This rule was listed as item number 1161 in the Department's Semiannual Agenda of Regulations published at 57 FR 16804, 16827 on April 27, 1992, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons set forth in the preamble, part 203 of title 24 of the Code of Federal Regulations is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 is revised to read as follows;

Authority: 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715(u).

2. Section 203.355 is revised to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (f) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345, 203.346, or 203.650 through 203.660 of this part:

(1) Obtain a deed in lieu of foreclosure (see §§ 203.357, 203.389, and 203.402(f) of this part) with title being taken in the name of the mortgagee or the Secretary; or

(2) Commence foreclosure. (b) *Vacant or abandoned property.* With respect to defaulted mortgages on vacant or abandoned property, if the mortgagee discovers, or should have discovered, that the property is vacant or abandoned, the mortgagee must commence foreclosure within the later of 120 days after the date the property became vacant, or 60 days after the date the property is discovered, or should have been discovered, to be vacant or abandoned; but no later than nine months from the date of default as provided in paragraph (a) of this section. The mortgagee must not delay foreclosure on vacant or abandoned property because of the requirements of § 203.606 of this part, or because of the

notice requirements of §§ 203.650 and 203.651 of this part.

(c) *Law prohibiting foreclosures within nine months.* If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of foreclosure within the time limits described in paragraphs (a) and (b) of this section, the mortgagee must commence foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited. If the laws of the State in which the mortgaged property is located require or if Federal bankruptcy law requires the prosecution of a foreclosure to be discontinued, the mortgagee must recommence the foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited.

(d) *Property located on Indian land.* Upon default of a mortgage on property located on Indian land insured pursuant to section 248 of the National Housing Act (see § 203.43h of this part), the mortgagee must comply with §§ 203.350(b) and 204.664 of this part.

(e) *Property located on Hawaiian home lands.* Upon default of a mortgage on property located on Hawaiian home lands insured pursuant to section 247 of the National Housing Act (see § 203.43i of this part), the mortgagee must comply with §§ 203.350(c) and 203.665 of this part.

(f) *Property located on the Allegany Reservation of the Seneca Nation of Indians.* Upon default of a mortgage on property located on the Allegany Reservation of the Seneca Nation of Indians authorized by section 203(q) of the National Housing Act (see § 203.43j of this part), the mortgagee must comply with §§ 203.350(d) and 203.666 of this part, unless the mortgagor and the lessor have executed a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by arbitration award. If a lease renewal or new lease has been executed, the mortgagee must comply with paragraph (a) of this section.

3. Section 203.356 is revised to read as follows:

§ 203.356 Notice of foreclosure; reasonable diligence requirements.

The mortgagee must give written notice to the Secretary within 30 days after the institution of foreclosure proceedings, and must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute "reasonable diligence" for each State is made available to mortgagees.

4. Section 203.359 is revised to read as follows:

§ 203.359 Time of conveyance to the Secretary.

(a) *For mortgages insured under firm commitments issued prior to November 19, 1992 or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter prior to November 19, 1992.* After acquiring good marketable title to and possession of the property the mortgagee must transfer the property to the Secretary:

(1) Within 30 days after acquiring possession of the mortgaged property by foreclosure or other means; or

(2) Within such further time as may be necessary to complete the title examination and perfect the title.

(b) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992.*—(1) *Conveyance by the mortgagee.* The mortgagee must acquire good marketable title and transfer the property to the Secretary within 30 days of the later of:

(i) Filing for record the foreclosure deed;

(ii) Recording date of deed in lieu of foreclosure;

(iii) Acquiring possession of the property;

(iv) Expiration of the redemption period; or

(v) Such further time as the Secretary may approve in writing.

(2) *Direct conveyance.* In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, the mortgagee must ensure that the property is transferred to the Secretary within 30 days of the reasonable diligence time frame specified in § 203.356 of this part.

5. Section 203.363 is revised to read as follows:

§ 203.363 Effect of noncompliance with regulations.

(a) *For mortgages insured under firm commitments issued prior to November 19, 1992 or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter prior to November 19, 1992.* If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Secretary may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply, or, in the alternative, the Secretary may reconvey title to the property to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insurance benefits at a subsequent date.

(b) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992.* If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Secretary may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply. In the alternative to holding processing in abeyance, the Secretary may reconvey title to the property to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled and the mortgagee shall refund the insurance benefits to the Secretary as well as other funds required by § 203.364 of this part. The mortgagee may reapply for insurance benefits at a subsequent date; provided, however, that the mortgagee may not be reimbursed for any expenses incurred in connection with the property after it has been reconveyed by the Secretary, or paid any debenture interest accrued after the date of initial conveyance or after the date conveyance was required by § 203.359 of this part, whichever is earlier, and there will be deducted from the insurance benefits any reduction in the Secretary's estimate of the value of the property occurring from the time of reconveyance to the time of reapplication.

6. Section 203.364 is revised, to read as follows:

§ 203.364 Mortgagee's liability for property expenditures.

Where the Secretary acquires a property and thereafter it becomes necessary for the Secretary to reconvey the property to the mortgagee due to the mortgagee's noncompliance with these regulations or the application for insurance benefits is withdrawn with the consent of the Secretary, the mortgagee shall reimburse the Secretary for all expenses incurred in connection with such acquisition and reconveyance. The reimbursement shall include interest on the amount of insurance benefits refunded by the mortgagee from the date the insurance benefits were paid to the date of refund at an interest rate set in conformity with the Treasury Fiscal Requirements Manual, and the Secretary's cost of holding the property, accruing on a daily basis, from the date the deed to the Secretary was filed for record to the date of reconveyance. These costs are based on the Secretary's estimate of the taxes, maintenance and operating expenses of the property, and administrative expenses. Appropriate adjustments shall be made by the Secretary on account of any income received from the property.

7. Section 203.365 is revised, to read as follows:

§ 203.365 Documents and information to be furnished the Secretary; claims review.

(a) *Items to be furnished the Secretary.* Within 45 days after the deed is filed for record, the mortgagee must forward to the Secretary:

(1) A copy of the deed to the Secretary that has been filed for record and the title evidence continued so as to include recordation of the deed.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Any additional information or data that the Secretary may require.

(b) *Items to be retained by mortgagee.* The mortgagee must retain all cash amounts, held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction, that have not been applied in reduction of the principal mortgage indebtedness.

(c) *Claim file to be maintained by mortgagee.* (1) The Secretary may verify the accuracy of information regarding the insurance claim either before payment of the claim or after payment by periodic reviews of the mortgagee's records. Mortgagees must reimburse the Secretary for any claim and interest overpaid because of incorrect, unsupported, or inappropriate information provided by the mortgagee, or because of failure to provide correct information.

(2) Mortgagees must maintain a claim file containing documentation supporting all information submitted for claim payment for at least three years after a claim has been paid. All claim files for claims paid during a period relating to an unresolved or ongoing claim review must be maintained until final resolution of such review. Information to be maintained in the claim file includes receipts covering all disbursements as required by the fiscal data form, ledger cards covering the mortgage transaction, and any additional information or data relevant to the mortgage transaction or insurance claim.

(3) The Secretary may review any claim file at any time during the three-year period after the claim has been paid. Denial of access to any files will be grounds for withdrawal of the mortgagee's approved lender status, debarment by the Secretary, or immediate suspension of all claim payments.

(4) Within 24 hours of a request by the Secretary, a mortgagee must make available for review, or forward to the Secretary, hard copies of identified claim files.

(d) *Statistical sampling.* HUD may use statistical sampling in selecting claims to be reviewed and in determining the amount due the Secretary because of overpayment.

8. Section 203.366 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph heading, and by adding a new paragraph (b), to read as follows:

§ 203.366 Conveyance of marketable title.

(a) *Satisfactory conveyance of title and transfer of possession.* * * *

(b) *Conveyance of property without good marketable title.* (1) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, if the title to the property conveyed by the mortgagee to the Secretary is not good and marketable, the mortgagee must correct any title defect within 60 days after receiving notice from the Secretary, or within such further time as the Secretary may approve in writing.

(2) If the defect is not corrected within 60 days, or such further time as the Secretary approves in writing, the mortgagee must reimburse the Secretary for HUD's costs of holding the property, accruing on a daily basis, and interest on the amount of insurance benefits paid to the mortgagee at an interest rate set in conformity with the Treasury Fiscal Requirements Manual from the date of such notice to the date the defect is corrected or until the Secretary reconveys the property to the mortgagee, as described in paragraph (b)(3) of this section. The daily holding costs to be charged a mortgagee shall include the costs specified in § 203.364 of this part.

(3) If the title defect is not corrected within a reasonable time, as determined by HUD, the Secretary will, after notice, reconvey the property to the mortgagee and the mortgagee must reimburse the Secretary in accordance with §§ 203.363 and 203.364 of this part.

9. In § 203.369, paragraphs (a) and (b) are revised, to read as follows:

§ 203.369 Deficiency judgments.

(a) *Mortgages insured on or after March 28, 1988.* (1) For mortgages insured pursuant to firm commitments issued on or after March 28, 1988, or pursuant to direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after March 28, 1988, the Secretary may require the mortgagee diligently to pursue a deficiency judgment in connection with any foreclosure. With respect to claims filed for insurance benefits on such mortgages, any judgment obtained by the mortgagee must be assigned to the Secretary.

(2) In cases where the Secretary requires the pursuit of a deficiency judgment and provides the mortgagee with the Secretary's estimate of the fair market value of the property, less adjustments, in accordance with § 203.368(e) of this part, the mortgagee must tender a bid at the foreclosure sale in that amount, and must take all other appropriate steps in accordance with State law to obtain a deficiency judgment.

(b) *Mortgages insured before March 28, 1988.* For mortgages insured pursuant to firm commitments issued before March 28, 1988, or pursuant to direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter before March 28, 1988, the Secretary may request that the mortgage diligently pursue a deficiency judgment in connection with the foreclosure. With respect to claims filed for insurance benefits on such mortgages, any judgment obtained by the mortgagee must be assigned to the Secretary.

* * * * *

10. Section 203.377 is revised, to read as follows:

§ 203.377 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until its conveyance to the Secretary, if such action does not constitute an illegal trespass. "Reasonable action" includes the commencement of foreclosure within the time required by § 203.355(b) of this part.

11. Section 203.378 is amended by adding a paragraph heading to paragraph (a), revising paragraph (b), and adding new paragraphs (c) and (d), to read as follows:

§ 203.378 Property condition.

(a) *Condition at time of transfer.* * * *

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the mortgagor, its heirs, successors or assigns in connection with mortgage insurance claims paid on or after July 2, 1968.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377 of this part, as to all mortgages insured on or after January 1, 1977; and

(3) As to all mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, any damage of whatsoever nature that the property is conveyed to the Secretary without notice to and approval by the Secretary as required by § 203.379 of this part.

(d) *Limitation.* The mortgagee's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

12. Section 203.379 is revised, to read as follows:

§ 203.379 Adjustment for damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377 of this part, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(1) If the prior approval of the Secretary is obtained, there will be deducted from the insurance benefits the Secretary's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(2) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(i) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of 100 percent of the insurable value of the improvements, or the principal loan balance of the mortgage; and

(ii) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium; and

(iii) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (a)(2)(i) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

(iv) The extent of coverage obtained by the mortgagee in accordance with paragraph (a)(2)(iii) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(v) The mortgagee took the actions required by § 203.377 of this part.

(3) The certification requirements set out in paragraph (a)(2) of this section apply to any mortgage insured by HUD on or after September 22, 1980, for which a claim has not been filed before September 30, 1986. Any mortgage insured on or after September 22, 1980, for which a claim has been filed before September 30, 1986, but the claim has not been settled before that date, will be governed by § 203.379(b) (1986) Edition as it existed immediately before September 30, 1986.

(4)(i) As used in this section, *reasonable rate* means a rate that is not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate.

(ii) If a State has neither a FAIR Plan nor a State-licensed rating organization for essential property insurance in the voluntary market, the mortgagee must provide to the HUD Field Office having jurisdiction, information concerning the lowest rates available from an insurer for the types of coverage involved, with a request for a determination of whether the rate is reasonable. HUD will determine the rate to be reasonable if it approximates the rate assessed for comparable insurance coverage applicable to similarly situated properties in a State that offers a FAIR Plan or maintains a State-licensed rating organization.

(b) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, the provisions of paragraph (a) of this section apply and, in addition, if the property has been damaged during the time of the mortgagee's possession by events other than fire, flood, earthquake, or tornado, or if it was damaged notwithstanding reasonable action by the mortgagee as required by § 203.377 of this part, the mortgagee must provide notice of such damage to the Secretary and may not convey until directed to do so by the Secretary. The Secretary will either:

(1) Allow the mortgagee to convey the property damaged; or

(2) Require the mortgagee to repair the damage before conveyance, and the Secretary will reimburse the mortgagee for reasonable payments not in excess of the Secretary's estimate of the cost of repair, less any insurance recovery.

(c) In the event the damaged property is conveyed to the Secretary without prior notice or approval as provided in paragraphs (a) or (b) of this section, the Secretary may:

(1) After notice, reconvey the property to the mortgagee and the mortgagee must reimburse the Secretary in accordance with §§ 203.363 and 203.364 of this part, or

(2) Require the mortgagee to reimburse the Secretary for the greater of the Secretary's estimate of the cost of repair or any insurance recovery.

13. Section 203.380 is revised to read as follows:

§ 203.380 Certificate of property condition.

(a) The mortgagee shall either:

(1) Certify that as of the date of the filing of deed for record, or assignment of the mortgage to the Secretary, the property was:

(i) Undamaged by fire, flood, earthquake, or tornado; and

(ii) As to mortgages insured or for which commitments to insure were issued on or after January 2, 1977, undamaged due to failure of the mortgagee to take action as required by § 203.377; and

(iii) As to mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, undamaged while the property was in the possession of the mortgage; or

(2) Attach to its claim a copy of the Secretary's authorization to convey the property in damaged condition.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Secretary as establishing the condition of the property, as of the date of the filing of the deed or assignment of the mortgage.

14. Section 103.387 is revised to read as follows:

§ 203.387 Acceptability of customary title evidence.

If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence shall be satisfactory to the Secretary and shall be considered as good and marketable. In cases of disagreement, the Secretary will make the final decision.

15. Section 203.391 is revised to read as follows:

§ 203.391 Title objection waiver with reduced insurance benefits.

Payment of an insurance claim will not automatically be refused solely because the title evidence reveals a condition of title not taken into consideration in the original appraisal and not covered by the provisions of § 203.389 of this part, or not otherwise waived in writing by the Secretary. In such instances, the Secretary may, at his or her option, approve the payment of a claim if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Secretary to compensate for any anticipated loss to the Mutual Mortgage Insurance Fund as a result of the existence of the title condition at the time of claim.

16. Section 203.402 is amended by revising the first sentence and removing the last sentence of paragraph (f), by revising paragraphs (g), (j) and (k)(1), and by adding paragraphs (p), (q) and (r), to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Secretary, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. * * *

(g)(1) *For mortgages insured under firm commitments issued before November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter before November 19, 1992,* reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property.

(2) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992,* reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359 of this part.

(3) Reasonable costs for performing the inspections required by § 203.377 of this part and to determine if the property is vacant or abandoned are considered to be costs of protecting, operating or preserving the property.

* * * * *

(j) Charges for the administration, operation, maintenance or repair of community-owned property or the maintenance and repair of the mortgaged property paid by the mortgagee with respect to which it certifies to the Secretary that payment was made for the purpose of discharging an obligation arising out of a covenant filed for record and approved by the Secretary prior to the issuance of the mortgage; and charges for the repair of the mortgaged property required by and in an amount authorized by the Secretary under § 203.379 of this part;

(k)(1) For properties conveyed to the Secretary, an amount equivalent to the debenture interest which would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356, 203.359, 203.360, 203.365, 203.606(b)(1), 203.366 of this part within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

* * * * *

(p) An amount approved by the Secretary and paid to the mortgagor as consideration for the execution of a deed-in-lieu of foreclosure;

(q) Reasonable costs incurred in evicting occupants and in removing personal property from acquired properties;

(r) Notwithstanding any other provision in this section, the mortgagee will not be reimbursed for any expenses incurred in connection with the property after a reconveyance from the Secretary to the mortgagee as provided in § 203.363(b) of this part.

§ 203.502 [Amended]

17. Section 203.502 is amended by removing from the last sentence in paragraph (b) the word "thirty" and adding, in its place, the word "fifteen".

Dated: October 14, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

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