

TABLE 1.—P/N'S OF AFFECTED RIGID TUBE FUEL MANIFOLDS

4-301-042-02	4-301-042-06	4-301-236-03	4-301-286-02
4-301-042-04	4-301-236-01	4-301-236-04	4-301-376-01
4-301-042-05	4-301-236-02	4-301-286-01	

These engines are installed on, but not limited to Aerospatiale AS350, Eurocopter MBB-BK117 and HH-65A, Bell 222, Page Thrush, Air Tractor AT-302, Piaggio P.166-DL3, Riley International R421, and Pacific Aero 08-600 aircraft.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Compliance with this AD is required as specified below, unless already done.

To prevent engine fuel leakage due to low-cycle fatigue (LCF) cracking of the rigid tube fuel manifold, which could result in an in-flight fire, do the following:

(a) Replace fuel manifolds that have accumulated the following gas generator rotor (Ng) cycles-since-new (CSN) on the effective date of this AD or Ng cycles-in-service (CIS) on the effective date of this AD since all tubes were replaced:

TABLE 2.—FUEL TUBE REPLACEMENT SCHEDULE

Ng CSN, or Ng CIS since total tube replacement	Replacement schedule
(1) 2,750 or less .....	Before accumulating 3,000 total Ng cycles.
(2) More than 2,750 .....	Within 250 CIS after the effective date of this AD.
(3) Unknown .....	(i) Within 2,000 CIS after the effective date of this AD; or (ii) At the next engine removal; or (iii) At the removal of the fuel manifold for cause, whichever is first.

**New Life Limitation**

(b) Do not install fuel manifolds with P/N's that are listed in Table 1 of this AD after the effective date of this AD if they meet ANY of the following conditions:

- (1) The manifold has accumulated 3,000 or more total Ng cycles; or
- (2) The manifold has had partial tube replacements; or
- (3) The manifold has an unknown number of Ng cycles.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

**Effective Date**

(e) This amendment becomes effective on November 30, 2001.

Issued in Burlington, Massachusetts, on October 19, 2001.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 01-26967 Filed 10-25-01; 8:45 am]

**BILLING CODE 4910-13-U**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**14 CFR Part 1260**

**NASA Grant and Cooperative Agreement Handbook—Miscellaneous Changes**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This is a final rule amending the NASA Grant and Cooperative Agreement Handbook to make administrative and editorial changes; clarify internal documentation requirements; delete the requirement for quarterly forecasts of recipient cash requirements; and clarify the submission requirements for NASA Form 1206, "Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs".

**EFFECTIVE DATE:** October 26, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Eugene Johnson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), (202) 358-4703, e-mail: ejohnson@hq.nasa.gov.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The current provision at § 1260.26, Financial Management, advised recipients that NASA would phase-in the adoption of an automated SF 272 system not requiring forecast estimates with a projected date of October 1, 2001, for implementation. This automated system change will be effective October 1, 2001, and the submission requirements for forecast estimates is revised to reflect this implementation. Clarification of submission requirements for NASA Form 1206 "Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs" as well as editorial changes to Part 1260, Exhibit E—Special Conditions for Cooperative Agreements between NASA and Commercial Space Centers are made. Internal documentation required by the grant officer prior to award is amended to include any data deliverables that may be required when potentially hazardous operations, such as those related to flight and/or mission critical ground

systems have been proposed. Lastly, § 1260.10 is amended to clarify that signature by the Authorizing Institutional Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met.

### B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the changes made by this rule are only clarifications of existing requirements.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

#### Tom Luedtke,

*Associate Administrator for Procurement.*

Accordingly, 14 CFR part 1260 is amended as follows:

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

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

### PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

2. Amend § 1260.10 by revising paragraphs (c)(1) and (4) to read as follows:

#### § 1260.10 Proposals.

\* \* \* \* \*

(c) \* \* \*

(1) Grant officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a grant or cooperative agreement. In order to reduce paper work required by the submitting institutions, and as directed by NASA; signature by the Authorizing Institutional Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met.

\* \* \* \* \*

(4) Each application for funding must contain assurances on NASA Form 1206, or specifically identify and make reference to an assurance that the recipient's programs and activities

comply with civil rights and nondiscrimination statutes specified in 14 CFR parts 1250 through 1253. The assurances provided on NASA Form 1206 shall suffice for all proposals of an applicant, if they remain current and accurate. An applicant may incorporate these assurances by reference in subsequent applications to NASA.

#### § 1260.11 [Amended]

3. In § 1260.11, amend the last sentence in paragraph (b) by adding “and any data deliverables that may be required when potentially hazardous operations, such as those related to flight and/or mission critical ground systems have been proposed (e.g. Payload Safety Data Review Package)” directly after the word “documentation.”.

#### § 1260.22 [Amended]

4. In the introductory text to § 1260.22, amend the last sentence by adding “(e.g. Payload Safety Data Review)” directly after the word “requirements”.

5. Section 1260.26 is amended by revising the date of the provision and paragraph (a) to read as follows:

#### § 1260.26 Financial management.

##### Financial Management

October 2001

(a) Effective October 1, 2001, advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Center which issued the grant in accordance with procedures provided to the recipient. The Recipient shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and to the Administrative Grant Officer (if NASA has delegated administration) within 15 working days following the end of each Federal Fiscal quarter. The final SF 272 is due within 90 days after the expiration date of the grant. The final SF 272 shall be submitted to the Financial Management Office, with copies sent to the NASA Grant Officer.

\* \* \* \* \*

6. In the Appendix to Subpart A of Part 1260, add Exhibit E to read as follows:

#### Exhibit E—Special Conditions for Cooperative Agreement Between NASA and the Commercial Space Centers

The following Space Development and Commercial Research (SDCR) Special Conditions are required to be included in full text for all SDCR Grants and Cooperative Agreements in addition to the General Conditions in the NASA Grant and Cooperative Agreement Handbook. Any

changes or additions to these Special Conditions must be approved by the Office of Procurement, NASA Headquarters, Procurement Operations Division, Code HS, prior to the award of the agreement.

#### Commercial Space Centers Program Grants/Cooperative Agreements

##### Intellectual Property

##### Patent Rights

October 2001

(a) Definitions.

(1) “Administrator” means the Administrator or Deputy Administrator of NASA.

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

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

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

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

(6) “Recipient” means:

(i) The signatory Recipient party or parties;

or

(ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

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

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

(b) Allocation of Principal Rights.

(1) Patent Rights: Retention by Grantee—CSC Program.

This Patent Rights Special Condition applies only to Commercial Space Centers Program Grants/Cooperative Agreements and takes precedence over any other patent provisions for NASA grants and cooperative agreements.

This grant is subject to the Patent Rights (Small Business Firms and Nonprofit Organizations) clause at 37 CFR 401.14 (“the clause”) with the following modifications:

(i) Where the term "contract" or "contractor" is used in the clause, those terms shall be read as "grant" and "grantee," respectively.

(ii) Where the term "Federal Agency," "agency" or "funding Federal Agency" is used in the clause, the term shall be read as "NASA."

(iii) The following sentence is added to paragraph (d)(2) of the clause:

Notwithstanding the above, the Grantee shall not be required to convey title to an invention in a foreign country if the contractor has filed for patent applications in a substantial number of industrialized countries.

(iv) The NASA regulation applicable to paragraph (e) of the clause is at 37 CFR part 404 "Licensing of Government Owned Inventions."

(v) The following subparagraphs are added to paragraph (e) of the clause:

(4) NASA agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise copies of any document which NASA obtained under this clause which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the Grantee (or its assignees, licensees, or employees) on a subject invention to which the Grantee has elected to retain title.

(5) NASA agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise any invention disclosure submitted under paragraph (c), above, for a reasonable time in order for the Grantee to file a patent application on any subject invention in which it has elected or retains the right to elect retention of title. For purposes of this paragraph, a reasonable time shall be the time during which an initial patent application may be filed under paragraph (c) of this clause; provided, however, that NASA may make disclosure at its discretion if it finds that the same information has been previously published by the inventor, Grantee, or otherwise.

(6) Nothing in subparagraphs (4) and (5) of this paragraph (e) shall preclude NASA's publishing or distributing as part of its regular technical information dissemination programs materials describing a subject invention to the extent such materials were provided as part of a technical report or other submissions of the Grantee which were submitted without restrictions independently of the requirements of this clause.

Furthermore, nothing in subparagraphs (4) and (5) of this paragraph (e) shall preclude NASA from releasing the subparagraphs to other contractors of NASA on a confidential or restricted distribution basis if such documents are relevant to the work being performed by those contractors.

(vi) The following subparagraph is added to paragraph (f) of the clause:

(5) the Grantee shall include a list of all subject inventions required to be disclosed during the preceding year in the technical progress report, renewal proposal, or annual status report, and a complete list (or a

negative statement) for the entire award period shall be included in the final report.

(vii) Pursuant to paragraph (g)(2) of the clause, the following subparagraphs (3) and (4) are added to paragraph (g), and shall be used in all subcontracts, regardless of tier, for the performance of research, experimental, developmental, design or engineering work in the United States, its possessions, or Puerto Rico, by other than a nonprofit organization or small business firm.

(3) Notwithstanding subparagraph (1), above, the Grantee will consult and obtain the approval of NASA for the Patent Rights clause to be used in any subcontract to be performed outside of the United States, its possessions, or Puerto Rico.

(4) Notwithstanding subparagraph (1), above, and in recognition of the Grantee's obligation to obtain and maintain private support for the CSC established under this Cooperative Agreement, the Grantee is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

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

(b) Request, in the event of inability to reach agreement pursuant to (a), above, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the Grantee be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the Grants Officer (see also paragraph (9)).

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

(ii) Waiver petition: The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR 1245.1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, Sec. 305). If a waiver is not requested or granted, the Grantee may request a license from NASA (see Licensing of NASA inventions, 14 CFR 1245.3). A subcontractor requesting a waiver must follow the procedures set forth in the NASA FAR Supplement clause at 18-52.227-71 (48 CFR 1852.227-71), "Requests for Waiver of Rights to Inventions." The terms "Contractor" and "contracting officer" shall be read as "Grantee" and "Grants Officer," as appropriate. Should the Grantee desire that an additional reservation regarding Grantee's rights, in accordance with paragraph (4)(b) of this Special Condition, be considered with the waiver request, both the potential subcontractor and the Grants Officer should be informed.

(viii) Paragraph (l) Communications, is completed to read as follows:

(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 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 six months from the date of receipt, in order for patent applications to be filed, provided that the Grantee identifies the information and the subject invention to which it relates at the time of submittal. If required by the Grants 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.

(ix) With respect to paragraph (l) of the clause, Grantee is hereby given permission to assign rights to subject inventions in the United States, provided the assignee agrees that any products embodying an assigned subject invention or produced through use of a subject invention will be manufactured substantially in the United States. However, an individual clause by the requirement for such an agreement may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to assign rights on similar terms to potential assignees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(2) Patent Rights: NASA Inventions.

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

(3) Patent Rights: NASA Contractor Inventions.

In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative

agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use all reasonable efforts to grant the Recipient or designated Consortium Member (if applicable) an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) Patent Rights: Joint NASA and Recipient Inventions.

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

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

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

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

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-

free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

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

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

(8) Property Rights in Inventions—CSC Program.

(i) This cooperative agreement or any subcontracts issued thereunder with other than a nonprofit organization or small business firm as defined in 35 U.S.C. 201, are subject to Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Any invention made in the performance of work under this cooperative agreement or any subcontract issued thereunder shall be presumed to have been made under the conditions of and subject to Section 305(a) of the Act and becomes the exclusive property of the United States subject, however, to the retention by the recipient or subcontractor of a royalty-free license to practice the invention pursuant to, and of the scope defined in, 14 CFR 1245.108. This license may be revoked under the conditions set forth in the Patent Licensing Regulations (37 CFR part 404). The recipient or applicable subcontractor may petition for waiver of title to the invention in accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(ii) The recipient or applicable subcontractor shall furnish to NASA a written report containing full and complete technical information concerning any invention made in the performance of any work under this cooperative agreement or any applicable subcontract promptly upon the making of such invention; and if waiver of title has been granted, shall state whether or not the recipient or subcontractor intends

to file or has filed patent applications thereon. Upon written request by NASA, the recipient or applicable subcontractor shall furnish additional information available to it, and shall secure the execution of such documents as may be necessary to enable the Administrator, NASA, to file and prosecute patent applications on any such invention for which NASA has retained title. Upon completion of the work under this cooperative agreement, the recipient or applicable subcontractor, shall furnish to NASA a report as to whether or not the recipient or subcontractor has filed, or intends to file, patent applications on such inventions.

(iii) All reports required by this clause, and its application, should be directed to the Patent Counsel or Intellectual Property Counsel of the NASA installation that has been assigned the responsibility of administering (technical monitoring and performance evaluation) the CSC grant/cooperative agreement of which this contract or subcontract is a part.

(End of Provision)

#### Rights in Data—CSC Program

October 2001

This Rights in Data Special Condition applies only to the Commercial Space Centers (CSC) Grants and Cooperative Agreements and takes precedence over any other Rights in Data provisions for NASA grants and cooperative agreements.

(a) Definitions. As used in this provision: "CSC Data" means data first produced by a Grantee in the performance of this cooperative agreement, which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Grantee or are not already available to the Government.

"CSC Rights" means the respective rights of the Grantees and the Government in the CSC data as set forth in paragraph (d) of this provision.

"Computer Software" means computer programs, computer databases, and documentation thereof.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to grant administration, such as financial, administrative, cost or pricing or management information.

"Form, Fit, and Function Data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements, except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited-Rights Data" means data (other than computer software) developed at private expense that embody trade secrets or are

commercial or financial and confidential or privileged.

“Restricted Computer Software” means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published, copyrighted computer software, including modifications of such computer software.

“Technical Data” means that data which are of a scientific or technical nature.

“Unlimited Rights” means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, perform publicly, display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this grant as data to be delivered without restriction;

(ii) All other data delivered under this grant unless provided otherwise for CSC data in accordance with paragraph (d) below or for limited-rights data or restricted computer software in accordance with paragraph (f) below.

(2) The Government shall have a royalty-free license to use, and to authorize support service contractors acting on its behalf to use, delivered CSC data to the extent permitted, and consistent with the disclosure prohibitions, set forth in paragraph (d) below.

(3) The Grantee shall have the rights to—

(i) Protect CSC rights in any CSC data delivered under this grant in the manner and to the extent provided in paragraph (d) below:

(ii) Withhold from delivery those data which are limited-rights data or restricted computer software to the extent provided in paragraph (f) below;

(iii) Substantiate use of, add, or correct CSC rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) below.

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

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

(6) Disclaimer of Liability. Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, disclosure and use of:

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

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

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

(c) Copyright.

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Grantee may establish claim to copyright subsisting in any data first produced in the performance of this grant. If claim to copyright is made, the Grantee shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including grant number) to the data when such data are delivered or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Grantee grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data. For computer software, the Grantee grants to the Government, and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Grantee shall not, without prior written permission of the Grants Officer, incorporate in data delivered under this grant any data that are not first produced in the performance of this grant and that contain the copyright notice of 17 U.S.C. 401 and 402, unless the Grantee

identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.

(d) Rights in CSC Data.

(1) The rights of the Government and the Grantee in CSC data shall be as set forth below.

(2) NASA shall have the right, at any time up to the two years after completion or termination of this agreement to obtain delivery of CSC data, either by express requirement in this grant or specific request by the Grants Officer. If such requirement or request for delivery is made, the Grantee is authorized to affix the following “CSC Rights Notice” to any CSC data delivered under this agreement and the Government will thereafter treat the data, subject to the provisions of paragraph (e) below, in accordance with such Notice.

#### CSC Rights Notice

October 2001

These CSC data are furnished with CSC rights under Grant/Cooperative Agreement No. \_\_. The Government agrees to use these data only for government purposes for five years effective November 1, 1996. These data shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without the express written permission of the Grantee, except that, subject to the limitations of this Notice, such data may be disclosed for use by support service contractors. After the aforesaid period the Government shall have unlimited rights in these data.

(End of Notice)

(3)(i) The Grantee shall assure that the CSC Rights Notice is placed on the data as soon as practicable after the data is generated and reduced to some tangible, recorded form as defined by the term “data” in paragraph (a), but in any event no later than the earlier of either the date of delivery of the data to NASA or the release of the data by the Grantee or its CSC organization, including any subcontractors thereof where applicable to others outside of the Grantee's, its CSC, or subcontractor's organization.

(ii) The Grantee is authorized to insert up to 7 (seven) years (from the date certain) in the Notice. Longer periods may be authorized by NASA, case-by-case, for specifically identified data items, upon approval of the Grants Officer. Such longer periods will normally require that NASA have the right to make the data available to other responsible parties, on reasonable terms and conditions, in the event the Grantee, its licensees, or assigns have not taken, or are not expected to take in a reasonable time, effective steps to achieve commercial utilization of any item, component, or process to which the data pertains. The “date certain” to be inserted in the Notice shall be no later than the date the Notice is affixed to the data.

(iii) The Grantee is authorized to make the CSC Rights Notice October 2001 applicable to

previously produced data (that qualifies as CSC data), provided that such data has not been released to others or furnished to NASA with any previously prescribed Notice. Further, the Grantee is authorized to substitute the July 1990 Notice for any previously prescribed Notice for any data that has been released to others or delivered to NASA provided that: (A) The Grantee identifies the data; (B) the protection afforded such data under the previously described Notice is still in force; and (C) the recipient (other than NASA) agrees to the substitution, or in the case of NASA, the Grants Officer is requested to make the substitution for specifically identified data. In this latter, event, the effective date inserted in the Notice shall be the Grantee's best estimate of the date the data was released to others or furnished to NASA.

(4) The Government shall have unlimited rights at the end of the period set forth in the "CSC Rights Notice," as to any CSC data delivered in accordance with subparagraph (2), above, provided, however, that if the Grantee or any of its licensees or assigns have plans and intentions to pursue commercial utilization of any items, components or processes (including computer software) which any delivered CSC data discloses, the aforesaid period will be expended for such data up to an additional 5 (five) years upon request made at any time prior to the end of the period provided in the "CSC Rights Notice."

(e) Omitted or Incorrect Markings.

(1) Data delivered to the Government without any notice authorized by paragraph (d) above, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Grantee may request, within 6 (six) months (or a longer time approved by the Grants Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Grantee's expense, and the Grants Officer may agree to do so if the Grantee—

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Grants Officer may also (i) permit correction, at the Grantee's expense, of incorrect notices if the Grantee identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(f) Protection of Limited Rights Data and Restricted Computer Software. When data other than that listed in paragraph (b)(1) are specified to be delivered under this grant and such data qualify as either limited-rights data or restricted computer software, the Grantee,

if the Grantee desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this grant. As a condition to this withholding, the Grantee shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) Subcontracting. The Grantee has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Grantee's obligations to the Government under this grant. If a subcontractor refuses to accept terms affording the Government such rights, the Grantee shall promptly bring such refusal to the attention of the Grants Officer and not proceed with subcontract award without further authorization.

(h) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(i) Transfer of Rights.

(1) Notwithstanding any other provisions of this clause, the Grantee agrees that it will neither assign any rights nor grant any exclusive rights in the United States to CSC data or copyrighted data first produced in the performance of this Agreement unless the assignee or licensee agrees that any products or processes depicted by the CSC data or expressed by the copyrighted data will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to assign grants or rights on similar terms to potential assignees or licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances domestic manufacture or practice is not commercially feasible.

(2) The Grantee agrees that it will not grant to any person or entity any exclusive right to use or sell in the United States any product or process that embodies CSC data or is expressed by copyrighted data first produced in the performance of this Agreement unless the person or entity agrees that such products or processes will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances, domestic manufacture or practice is not commercially feasible.

#### § 1260.134 [Amended]

7. Amend § 1260.134 in paragraph (a) by removing "§ 1260.33(b)" and adding "§ 1260.133(b)" in its place.

#### § 1260.152 [Amended]

8. Amend § 1260.152 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).  
[FR Doc. 01-26623 Filed 10-25-01; 8:45 am]  
BILLING CODE 7510-01-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 204

[Release No. 34-44965]

RIN 3235-AI34

### Debt Collection—Amendments to Collection Rules and Adoption of Wage Garnishment Rules

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (Commission) is amending its debt collection rules. The amendments update procedures and make technical amendments to the Commission's rules for debt collection by administrative offset, federal salary offset, and tax refund offset, and add new rules for administrative wage garnishment. The changes are required by the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** November 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Hall, Office of Chief Counsel, Division of Enforcement at (202) 942-4635, or at 450 5th Street, NW., Washington, DC 20549-0506.

**SUPPLEMENTARY INFORMATION:** We are amending the Commission's debt collection rules to conform them to the Debt Collection Improvement Act of 1996 (DCIA) and related rules adopted by federal agencies with responsibilities for government-wide debt collection. Currently, the Commission has rules for collecting its unpaid debts through three offset methods: administrative, salary and tax offset.<sup>1</sup> The Commission also has rules concerning contracts for collection services to recover delinquent debts. The Commission adopted all of its debt collection rules in 1993 in accordance with then existing provisions of the Debt Collection Act, the Federal Claims Collection Standards (FCCS), and other authorities governing the collection of federal debts. On September 17, 1996, the Commission entered into an agreement with the Financial Management Service (FMS), a bureau of the Department of the

<sup>1</sup> 17 CFR part 204.