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THE WHITE HOUSE

WASHINGTON

February 3, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: RICHARD A. HAUSER Original signed by RAH
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order:
Presidential Commission on Space
Shuttle Challenger Accident

Counsel's Office has reviewed the above-referenced proposed Executive Order. Based on discussions with the NASA General Counsel, "interim review board of the National Aeronautics and Space Administration" in Section 2(b)(1) should be changed to "National Aeronautics and Space Administration review board." I would also add "the" between "on" and "Space" in the name of the Commission, which appears in the title and in line 2 of Section one.

Finally, I would note that the memorandum for the President from Director Miller inaccurately states that the Commission will be composed of 20 members. It will be composed of no more than 20 members, and will probably start out with less than 20.

RAH:JGR:aea 2/3/86
cc: FFFielding
RAHauser
JGRoberts
Subj
Chron

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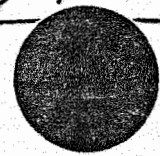
RAH:JGR:aea 2/3/86
cc: FFFielding
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JGRoberts
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Chron

ID # 366151 CU

FG 427

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

COPY
from ORM



O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 / 1

Name of Correspondent: David Chew

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Proposed executive order: Presidential Commission on Space Shuttle Challenger Accident

ROUTE TO: Office/Agency (Staff Name)	ACTION		DISPOSITION	
	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>86102103</u>		<u>cf 86102103</u>
<u>CUH 18</u>	R	<u>86102103</u>		<u>C 86102103</u>
<u>CUAT04</u>	S	<u>86102103</u>		<u>C 86102103</u>
	Referral Note:	<u>Feb 3 86 RAH memo to David Chew</u>		
		<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note:			
		<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note:			

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

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 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/2/86 ACTION/CONCURRENCE/COMMENT DUE BY: 11:30 A.M. TODAY

SUBJECT: PROPOSED EXECUTIVE ORDER: PRESIDENTIAL COMMISSION ON SPACE SHUTTLE CHALLENGER ACCIDENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	POINDEXTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MILLER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CHAVEZ	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	STEELMAN	<input type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LACY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please provide any comments/recommendations by 11:30 a.m. this morning. This Order will be signed this afternoon at 2:00 p.m.

RESPONSE:



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 1, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: James O. Miller III
Director

SUBJECT: Proposed Executive Order Entitled "Presidential
Commission on Space Shuttle Challenger Accident"

SUMMARY. This memorandum forwards for your consideration a proposed Executive order, drafted by this Office in consultation with the National Security Council and the National Aeronautics and Space Administration, which would establish a Presidential advisory commission to work closely with NASA in its investigation of the accident to the Space Shuttle Challenger on January 28th.

BACKGROUND. The proposed Executive order would establish the Presidential Commission on Space Shuttle Challenger Accident. The Commission would be composed of 20 members designated or appointed by the President. The members would be drawn from leaders of the government, scientific, technical, and management communities. The President would designate a Chairman and a Vice Chairman from among its members. ✓

The Commission would work closely with NASA on the investigation of the accident to the Space Shuttle Challenger. The Commission would provide advice, as appropriate, on further analytical work or technical assessments that should be conducted. The Commission also would review NASA's report and findings on the Space Shuttle accident and submit its findings on the validity of the NASA report and its recommendations on safety procedures for the Space Shuttle. The Commission would submit its final report to the President and the Administrator of NASA within three months of receipt of the final NASA report on the accident.

Time has not permitted a formal circulation of the proposed Executive order to the affected agencies for clearance. However, based on conversations with senior policy officials of the National Security Council and NASA, no objections to issuance of the proposed order are anticipated.

RECOMMENDATION. I recommend that you sign the proposed Executive order.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 1, 1986

Hon. Edwin Meese, III
Attorney General
Washington, D.C.

Dear Mr. Attorney General:

Enclosed, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order, drafted by this Office in consultation with the National Security Council and the National Aeronautics and Space Administration, which would establish a Presidential advisory commission on the Space Shuttle Challenger accident.

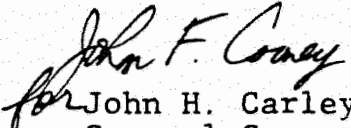
The proposed Executive order would establish the Presidential Commission on Space Shuttle Challenger Accident, to be composed of not more than 20 persons to be appointed or designated by the President from among leaders of the government, scientific, technical, and management communities. The Commission will work closely with NASA's Accident Investigation Board reviewing the destruction of the Space Shuttle Challenger. The Commission will provide advice, as appropriate, on further analytical work or technical assessments that should be conducted on the accident. The Commission also will review the final NASA report on the accident and submit its findings on the validity of the NASA report and its recommendations on safety procedures for the Space Shuttle. The Commission will submit its final report to the President and the Administrator of NASA within three months of receipt of NASA's final report on the accident.

The White House Office has requested that the proposed Executive order be processed as promptly as possible, so that the proposal may be submitted to the President for his consideration and announced to the public by no later than 2:00 p.m. Monday, February 3rd.

You may submit any questions you may have concerning the proposed Executive order to Mr. John F. Cooney of my staff (tel. 395-5600).

The proposed Executive order has the approval of the Director of the Office of Management and Budget.

Sincerely,


for John H. Carley
General Counsel



U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

FEB 2 1986

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive order entitled "Presidential Commission on Space Shuttle Challenger Accident." This proposed Executive order has been submitted by the Office of Management and Budget (OMB), in consultation with the National Security Counsel and National Aeronautics and Space Administration. It has been forwarded, with the approval of the Director of OMB, to this Department for review of its form and legality.

The proposed Executive order is approved with respect to form and legality.

Respectfully,

A handwritten signature in cursive script, appearing to read "Charles J. Cooper".

Charles J. Cooper
Assistant Attorney General
Office of Legal Counsel



U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

FEB 2 1986

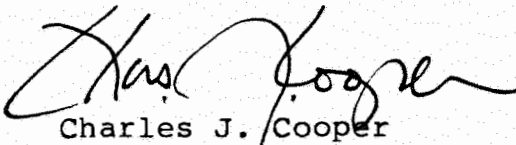
MEMORANDUM

Re: Proposed Executive order entitled "Presidential
Commission on Space Shuttle Challenger Accident"

The attached proposed Executive order has been submitted by the Office of Management and Budget, in consultation with the National Security Counsel and the National Aeronautics and Space Administration (NASA). The Office of Management and Budget, with the approval of its Director, has forwarded the proposed order to this Department for review of its form and legality.

The proposed Executive order will establish a federal advisory committee of twenty members, appointed by the President. The commission will review the findings and recommendations of the Accident Investigation Board that NASA has set up to investigate the explosion that destroyed the space shuttle Challenger. The commission will be funded by NASA. Its members will serve in their individual capacities and will, therefore, be special government employees subject to applicable ethical restraints.

The proposed Executive order is acceptable with respect to form and legality.


Charles J. Cooper
Assistant Attorney General
Office of Legal Counsel

EXECUTIVE ORDER

- - - - -

PRESIDENTIAL COMMISSION ON SPACE SHUTTLE CHALLENGER ACCIDENT

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Presidential Commission on Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, scientific, technical and management communities.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall investigate the accident to the Space Shuttle Challenger which occurred on January 28, 1986.

(b) The Commission shall:

(1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident, including review of the findings, corrective actions and recommendations being developed by the interim review board of the National Aeronautics and Space Administration; and

(2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

Sec. 3. Administration. (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Commission with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of the National Aeronautics and Space Administration, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after submitting its final report.

THE WHITE HOUSE,

PUBLIC LAW 98-361—JULY 16, 1984

**NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION AUTHORIZATION ACT,
1985**

Public Law 98-361
98th Congress

An Act

July 16, 1984
[H.R. 5154]

To authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes.

National
Aeronautics
and Space
Administration
Authorization
Act, 1985.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act, 1985".

TITLE I—AUTHORIZATIONS OF APPROPRIATIONS

SEC. 101. There is hereby authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1984:

- (a) For "Research and development", for the following programs:
- (1) Space transportation capability development, \$351,400,000;
 - (2) Space station, \$150,000,000
 - (3) Physics and astronomy, \$696,200,000;
 - (4) Life sciences, \$63,300,000;
 - (5) Planetary exploration, \$296,900,000;
 - (6) Space applications, \$390,100,000 of which \$45,000,000 is authorized only for the Advanced Communications Technology Satellite flight program which is designed to lead to a launch of such satellite no later than 1989;
 - (7) Technology utilization, \$9,500,000;
 - (8) Aeronautical research and technology, \$352,400,000, of which \$24,000,000 is authorized only for activities which are designed to lead to a flight test of a single rotation or counter rotation turboprop concept no later than 1987 (and for supporting research and technology);
 - (9) Space research and technology, \$150,000,000; and
 - (10) Tracking and data advanced systems, \$15,300,000.
- (b) For "Space flight, control and data communications", for the following programs:
- (1) Space shuttle production and operational capability, \$1,470,600,000;
 - (2) Space transportation operations, \$1,319,000,000; and
 - (3) Space and ground network, communications and data systems, \$795,700,000.
- (c) Except as provided in section 102(a), for "Construction of facilities", including land acquisition, as follows:
- (1) Repairs to test stand 500, George C. Marshall Space Flight Center, \$1,600,000;
 - (2) Space shuttle facilities at various locations as follows:
 - (A) Modifications of site electrical substation, Lyndon B. Johnson Space Center, \$3,200,000;
 - (B) Modification for single engine testing, National Space Technology Laboratories, \$3,000,000;

(C) Construction of launch complex 39 logistics facility, John F. Kennedy Space Center, \$10,000,000;

(D) Construction of solid rocket booster assembly and refurbishment facility, John F. Kennedy Space Center, \$15,000,000;

(3) Space shuttle payload facilities at various locations as follows:

(A) Construction of additions to cargo hazardous servicing facility, John F. Kennedy Space Center, \$4,600,000;

(B) Construction of biomedical research facility, Ames Research Center, \$2,100,000;

(4) Construction of addition to network control center, Goddard Space Flight Center, \$2,200,000;

(5) Construction of Earth and space science laboratory, Jet Propulsion Laboratory, \$12,200,000;

(6) Construction of numerical aerodynamic simulation facility, Ames Research Center, \$11,500,000;

(7) Modifications of the 8-foot high temperature tunnel, Langley Research Center, \$13,800,000;

(8) Construction of 34-meter antenna, Madrid, Spain, \$6,000,000;

(9) Modifications of 64-meter antenna, DSS-63, Madrid, Spain, \$7,800,000;

(10) Repair of facilities at various locations, not in excess of \$750,000 per project, \$20,000,000;

(11) Rehabilitation and modification of facilities at various locations, not in excess of \$750,000 per project, \$25,000,000;

(12) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of \$500,000 per project, \$5,000,000; and

(13) Facility planning and design not otherwise provided for, \$12,000,000.

(d)(1) For "Research and program management", \$1,316,000,000, and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.

(2) Of the funds authorized under paragraph (1) \$1,000,000 shall be available for the activities of the National Commission on Space, established pursuant to title II of this Act.

(e) Notwithstanding the provisions of subsection (h), appropriations hereby authorized for "Research and development" and "Space flight, control and data communications" may be used (1) for any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the Administration for the performance of research and development contracts, and (2) for grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities; and title to such facilities shall be vested in the United States unless the Administrator determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Each such grant shall be made under such conditions as the Administrator shall determine to be required to insure that the United States will receive therefrom benefit adequate to justify the making of that grant. None of the funds appropriated for "Research and development" and "Space flight, control and data

Grants.

communications" pursuant to this Act may be used in accordance with this subsection for the construction of any major facility, the estimated cost of which, including collateral equipment, exceeds \$500,000, unless the Administrator or the Administrator's designee has notified the Speaker of the House of Representatives and the President of the Senate and the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the nature, location, and estimated cost of such facility.

42 USC 2459a.

(f) When so specified and to the extent provided in an appropriation Act, (1) any amount appropriated for "Research and development," for "Space flight, control and data communications" or for "Construction of facilities" may remain available without fiscal year limitation, and (2) maintenance and operation of facilities, and support services contracts may be entered into under the "Research and program management" appropriation for periods not in excess of twelve months beginning at any time during the fiscal year.

(g) Appropriations made pursuant to subsection (d) may be used, but not to exceed \$35,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator and the Administrator's determination shall be final and conclusive upon the accounting officers of the Government.

(h) Of the funds appropriated pursuant to subsections (a), (b), and (d), not in excess of \$100,000 for each project, including collateral equipment, may be used for construction of new facilities and additions to existing facilities, and for repair, rehabilitation, or modification of facilities: *Provided*, That, of the funds appropriated pursuant to subsection (a) or (b), not in excess of \$500,000 for each project, including collateral equipment, may be used for any of the foregoing for unforeseen programmatic needs.

SEC. 102. (a) Notwithstanding the provisions of section 101(c) of the title, the total amount authorized to be appropriated by such section shall be \$5,000,000 less than the sum of the amounts contained in paragraphs (1) through (13) of such section for individual projects.

(b) After the reduction specified in subsection (a) of this section is made, authorization is granted whereby any of the amounts prescribed in paragraphs (1) through (12) inclusive, of section 101(c)—

(1) in the discretion of the Administrator or the Administrator's designee, may be varied upward 10 per centum, or

Report.

(2) following a report by the Administrator or the Administrator's designee to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the circumstances of such action, may be varied upward 25 per centum, to meet unusual cost variations, but the total cost of all work authorized under such paragraphs shall not exceed the total of the amounts specified in such paragraphs.

SEC. 103. Not to exceed one-half of 1 per centum of the funds appropriated pursuant to section 101(a) or 101(b) hereof may be transferred to and merged with the "Construction of facilities" appropriation, and, when so transferred, together with \$10,000,000 of funds appropriated pursuant to section 101(c) hereof (other than funds appropriated pursuant to paragraph (13) of such section) shall be available for expenditure to construct, expand, and modify laboratories and other installation at any location (including locations specified in section 101(c)), if (1) the Administrator determines such action to be necessary because of changes in the national program of

aeronautical and space activities or new scientific or engineering developments, and (2) the Administrator determines that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities. The funds so made available may be expended to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment. No portion of such sums may be obligated for expenditure or expended to construct, expand, or modify laboratories and other installations unless a period of thirty days has passed after the Administrator or the Administrator's designee has transmitted to the Speaker of the House of Representatives and to the President of the Senate and to the Committee on Science and Technology of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a written report containing a full and complete statement concerning (A) the nature of such construction, expansion, or modification, (B) the cost thereof including the cost of any real estate action pertaining thereto, and (C) the reason why such construction, expansion, or modification is necessary in the national interest.

Report.

SEC. 104. Notwithstanding any other provision of this Act—

(1) no amount appropriated pursuant to this Act may be used for any program deleted by the Congress from requests as originally made to either the House Committee on Science and Technology or the Senate Committee on Commerce, Science, and Transportation;

(2) no amount appropriated pursuant to this Act may be used for any program in excess of the amount actually authorized for that particular program by sections 101(a), 101(b), and 101(d); and

(3) no amount appropriated pursuant to this Act may be used for any program which has not been presented to either such committee;

unless a period of thirty days has passed after the receipt by the Speaker of the House of Representatives and the President of the Senate and each such committee of notice given by the Administrator or the Administrator's designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

SEC. 105. It is the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.

Funds.
42 USC 2459.

SEC. 106. The authorization for shuttle production and operational capability includes provisions for the production of structural spares and the critical skills necessary for installation of electrical, mechanical, and fluid systems thereby maintaining production readiness for a fifth orbiter vehicle.

SEC. 107. No civil space station authorized under section 101(a)(2) of this title may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.

Defense and
national
security.

15 USC 4261
note.

SEC. 108. (a) The Administrator of the National Aeronautics and Space Administration is directed to continue and to enhance such Administration's programs of remote-sensing research and development.

(b) The Administrator is authorized and encouraged to—

(1) conduct experimental space remote-sensing programs (including applications demonstration programs and basic research at universities);

(2) develop remote-sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(3) conduct such research and development in cooperation with other public and private research entities, including private industry, universities, Federal, State, and local government agencies, foreign governments, and international organizations, and to enter into arrangements (including joint ventures) which will foster such cooperation.

SEC. 109. It is the intent of the Congress that expenditures made from sums appropriated pursuant to the authorization contained in subsection (a)(8) of section 101 of this Act for activities in the advanced turboprop program should be recouped by the National Aeronautics and Space Administration if and when commercially successful products are developed by the aircraft industry as a direct result of such activities. For this purpose the Administrator shall submit to Congress within sixty days of enactment of this Act a plan for the payment to the Administrator of royalties by firms in the aircraft industry with respect to any such products which may be so developed by them.

Royalty
payments
plan.

42 USC 2451.

SEC. 110. (a) Section 102 of the National Aeronautics and Space Act of 1958, as amended, is amended—

(1) by striking out "(e) and (f)" in subsection (g) and inserting in lieu thereof "(e), (f), and (g)";

(2) by redesignating subsections (c) through (g) as subsections (d) through (h); and

(3) by inserting after subsection (b) the following new subsection:

"(c) The Congress declares that the general welfare of the United States requires that the National Aeronautics and Space Administration (as established by title II of this Act) seek and encourage, to the maximum extent possible, the fullest commercial use of space."

(b) Section 102(d)(1) of the National Aeronautics and Space Act of 1958, as amended (and as redesignated by subsection (a) of this section), is amended by inserting "of the Earth and" after "knowledge".

Congress.
Defense and
national
security.

Property,
Federal.

SEC. 111. (a) Any Federal personal property may be disposed of in accordance with subsection (b) if such property—

(1) is scientific research or development equipment and is not personal property that may be used for general administrative purposes;

(2) has been loaned by the National Aeronautics and Space Administration to any academic institution or nonprofit organization; and

(3) as of March 31, 1984, has been on loan to any such institution or organization for at least two years.

(b) The Administrator may transfer title to property described in subsection (a) to an academic institution or nonprofit organization if the Administrator certifies that—

- (1) such property is being used by the institution or organization holding such property for a purpose consistent with the use intended when the property was loaned; and
- (2) the Administration will no longer need such property.

TITLE II—NATIONAL COMMISSION ON SPACE

PURPOSE

SEC. 201. It is the purpose of this title to establish a National Commission on Space that will assist the United States—

42 USC 2451
note.

- (1) to define the long-range needs of the Nation that may be fulfilled through the peaceful uses of outer space;
- (2) to maintain the Nation's preeminence in space science, technology, and applications;
- (3) to promote the peaceful exploration and utilization of the space environment; and
- (4) to articulate goals and develop options for the future direction of the Nation's civilian space program.

FINDINGS

SEC. 202. The Congress finds and declares that—

Congress.

(1) the National Aeronautics and Space Administration, the lead civilian space agency, as established in the National Aeronautics and Space Act of 1958, as amended, has conducted a space program that has been an unparalleled success, providing significant economic, social, scientific, and national security benefits, and helping to maintain international stability and good will;

42 USC 2451
note.

(2) the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.), has provided the policy framework for achieving this success, and continues to be a sound statutory basis for national efforts in space;

42 USC 2451
note.

(3) the United States is entering a new era of international competition and cooperation in space, and therefore this Nation must strengthen the commitment of its public and private technical, financial, and institutional resources, so that the United States will not lose its leadership position during this decade;

(4) while there continues to be a crucial Government role in space science, advanced research and development, provision of public goods and services and coordination of national and international efforts, advances in applications of space technology have raised many issues regarding public and private sector roles and relationships in technology development, applications, and marketing;

(5) the private sector will continue to evolve as a major participant in the utilization of the space environment;

(6) the Nation is committed to a permanently manned space station in low Earth orbit, and future national efforts in space will benefit from the presence of such a station;

(7) the separation of the civilian and military space programs is essential to ensure the continued health and vitality of both; and

(8) the identification of long range goals and policy options for the United States civilian space program through a high level,

representational public forum will assist the President and Congress in formulating future policies for the United States civilian space program.

NATIONAL COMMISSION ON SPACE

President of U.S.
42 USC 2451
note.

SEC. 203. (a)(1) The President shall within ninety days of the enactment of this Act establish a National Commission on Space (hereinafter in this title referred to as the "Commission"), which shall be composed of 15 members appointed by the President. The members appointed under this subsection shall be selected from among individuals from Federal, State, and local governments, industry, business, labor, academia, and the general population who, by reason of their background, education training, or experience, possess expertise in scientific and technological pursuits, as well as the use and implications of the use of such pursuits. Of the fifteen members appointed, not more than three members may be employees of the Federal Government. The President shall designate one of the members of the Commission appointed under this subsection to serve as Chairman, and one of the members to serve as Vice Chairman. The Vice Chairman shall perform the functions of the Chairman in the Chairman's absence.

(2) Members appointed by the President under paragraph (1) of this subsection may be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect under section 5332 of title 5, United States Code, for grade GS-18 of the General Schedule for each day, including traveltime, during which such members are engaged in the actual performance of the duties of the Commission. While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, United States Code. Individuals who are not officers or employees of the United States and who are members of the Commission shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.

(b)(1) The President shall appoint one individual from each of the following Federal departments and agencies to serve as ex officio, advisory, non-voting members of the Commission (if such department or agency does not already have a member appointed to the Commission pursuant to subsection (a)(1)):

- (A) National Aeronautics and Space Administration.
- (B) Department of State.
- (C) Department of Defense.
- (D) Department of Transportation.
- (E) Department of Commerce.
- (F) Department of Agriculture.
- (G) Department of the Interior.
- (H) National Science Foundation.
- (I) Office of Science and Technology Policy.

Congress.

(2) The President of the Senate shall appoint two advisory members of the Commission from among the Members of the Senate and the Speaker of the House of Representatives shall appoint two advisory members of the Commission from among the Members of the House of Representatives. Such members shall not participate,

except in an advisory capacity, in the formulation of the findings and recommendations of the Commission.

(3) Members of the Commission appointed under this subsection shall not be entitled to receive compensation for service relating to the performance of the duties of the Commission, but shall be entitled to reimbursement for travel expenses incurred while in the actual performance of the duties of the Commission.

(c) The Commission shall appoint and fix the compensation of such personnel as it deems advisable. The Chairman of the Commission shall be responsible for—

- (1) the assignment of duties and responsibilities among such personnel and their continuing supervision; and
- (2) the use and expenditures of funds available to the Commission.

In carrying out the provisions of this subsection, the Chairman shall act in accordance with the general policies of the Commission.

(d) To the extent permitted by law, the Commission may secure directly from any executive department, agency, or independent instrumentality of the Federal Government any information it deems necessary to carry out its functions under this Act. Each such department, agency, and instrumentality shall cooperate with the Commission and, to the extent permitted by law and upon request of the Chairman of the Commission, furnish such information to the Commission.

(e) The Commission may hold hearings, receive public comment and testimony, initiate surveys, and undertake other appropriate activities to gather the information necessary to carry out its activities under section 204 of this title.

(f) The Commission shall cease to exist sixty days after it has submitted the plan required by section 204(c) of this title.

Expiration date.

FUNCTIONS OF THE COMMISSION

SEC. 204. (a) The Commission shall study existing and proposed space activities and formulate an agenda for the United States civilian space program. The Commission shall identify long range goals, opportunities, and policy options for United States civilian space activity for the next twenty years. In carrying out this responsibility, the Commission shall take into consideration—

42 USC 2451
note.

- (1) the commitment by the Nation to a permanently manned space station in low Earth orbit;
- (2) present and future scientific, economic, social, environmental, and foreign policy needs of the United States, and methods by which space science, technology, and applications initiatives might address those needs;
- (3) the adequacy of the Nation's public and private capability in fulfilling the needs identified in paragraph (2);
- (4) how a cooperative interchange between Federal agencies on research and technology development programs can benefit the civilian space program;
- (5) opportunities for, and constraints on, the use of outer space toward the achievement of Federal program objectives or national needs;
- (6) current and emerging issues and concerns that may arise through the utilization of space research, technology development, and applications;

(7) the Commission shall analyze the findings of the reviews specified in paragraphs (1) through (6) of this subsection, and develop options and recommendations for a long range national civilian space policy plan.

(b) Options and recommendations submitted in accordance with subsection (a)(7) of this section shall include, to the extent appropriate, an estimate of costs and time schedules, institutional requirements, and statutory modifications necessary for implementation of such options and recommendations.

Civilian space
activity plan.

(c) Within twelve months after the date of the establishment of the Commission, the Commission shall submit to the President and to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives, a long range plan for United States civilian space activity incorporating the results of the studies conducted under this section, together with recommendations for such legislation as the Commission determines to be appropriate.

Approved July 16, 1984.

LEGISLATIVE HISTORY—H.R. 5154:

HOUSE REPORTS: No. 98-629 (Comm. on Science and Technology) and No. 98-873 (Comm. of Conference).

SENATE REPORT No. 98-455 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 130 (1984):

Mar. 28, considered and passed House.

June 21, considered and passed Senate, amended.

June 27, Senate agreed to conference report.

June 28, House agreed to conference report.



PRESIDENTIAL COMMISSION ON SPACE SHUTTLE CHALLENGER ACCIDENT

*The Federal
Advisory
Committee
Act
(5 U.S.C.
APP. I)*

✓ By the authority vested in me as President by the Constitution and statutes of the United States of America, including ~~Title II of the National Aeronautics and Space Administration Authorization Act, 1985 (Public Law 98-361)~~ ("the Act"), and in order to establish a Presidential Commission on Space Shuttle Challenger Accident, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established a Presidential Advisory Commission to review the Space Shuttle Challenger accident of ~~2~~⁸ January 1986. The Commission shall be composed of:

(1) fifteen members appointed or designated by the President, of whom no more than three shall be employees of the federal government; chosen by reason of their background, education, training, experiences and national reputations in management, academia or aerospace planning or engineering; ~~and whose expertise pertain to scientific and technological pursuits specifically related to space launch, space flight, space engineering, space systems development, space systems management, and related areas of administration, programming, and software development.~~

(2) not more than nine advisory, non-voting members designated by the President, representing the Federal departments and agencies set forth in Section 203(b) (1) of ~~(the Act)~~, ^(space out) provided that no one of those departments and agencies shall have more than one employee appointed to the Commission.

(b) The President shall designate a Chairman and a Vice Chairman from among the ~~voting~~ members of the Commission.

*TYPE
RETRACTED*

Sec. 2. Functions. (a) ~~Pursuant to Section 204 of the Act,~~ the Commission shall review the findings of a specially appointed NASA accident investigation board and their report on the destruction of the Space Shuttle Challenger after its launch.

(1) The Commission will conduct a comprehensive study and review of the NASA investigative findings, the analyses performed by the NASA Board, and will validate those findings deemed prudent and thorough, or will challenge those findings deemed unsupported or incomplete.

(2) Where appropriate the Commission will provide their guidance on procedural changes, safety modifications or production alterations that will ensure that future space flight missions are as safe as humanly possible and that every possible action is taken to prevent recurrence of tragedies like that of the Challenger space craft.

(3) The Commission shall provide advice, as appropriate concerning any further analytical work or technical assessments that should be conducted concerning the accident.

*John
O'Brien* 453-2450 (u) 4C
280-1089 (h) NASA

(b) It is imperative that Space Shuttle operations resume as quickly as possible to preclude serious and lasting adverse impact on the space launch program of the United States. Therefore the following will be accomplished:

note of NASA Admin in reporting

(1) The Commission shall submit its report to the President and the Congress within three months of receipt of the NASA Accident Investigation Board report.

(2) ~~The Commission shall provide interim verbal reports to the President as frequently as monthly until the review is complete.~~

Sec. 3. Administration. (a) the heads of Executive departments, agencies and independent instrumentalities shall, to the extent permitted by law, provide the Commission, upon request, such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission appointed by the President under Section 1(a)(1) from among private citizens of the United States may be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect under section 5332 of title 5, United States Code, for grade GS-18 of the General Schedule for each day, including traveltime, during which such members are engaged in the actual performance of the duties of the Commission. While engaged in the work of the Commission, both voting and non-voting members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5101-5107).

NO PAY

(c) To the extent permitted by law and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Council, except that of reporting annually to the Congress, shall be performed by the Administrator of the National Aeronautics and Space Administration, in accordance with guidelines procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after submitting the report required by Section 2(b) of this Order.

RONALD REAGAN

THE WHITE HOUSE,
January 1986

Charter
of the
Presidential Advisory Commission
to Review the
Space Shuttle Challenger Accident

This charter for the Commission will serve to provide guidance on the tasks to be performed in reviewing accident investigation reports and findings. It is not intended that this charter be all-inclusive and specific. Rather, it is furnished to provide a structural framework within which the Commission can freely function.

The specific policy for the United States space transportation system and the principles of conduct for the United States space program are contained in several sources documents. National Space Policy is established by NSDD-42. National Space Strategy is established by NSDD-144. Certain other NSDDs cover international involvement with the U.S. space program, production decisions on this space launch fleet, the role of commercialization of space, national security requirements, and space launch pricing issues. All these documents contain guidance and direction which affects the conducts of the Space Shuttle program and its importance to assured access to space by the United States. The focus of the Commission's findings are to ensure the accident report is as thorough and comprehensive as possible. The Commission should offer suggested changes to those national policy, strategy, or management statements where it is found that as a result of the Space Shuttle Challenger accident, that they are either impediments, or are no longer relevant.

Evaluation of systems and options available to augment the now smaller shuttle orbiter fleet, and programmatic changes needed to ensure continuity of the U.S. space program are being addressed by another body. Those evaluations will be made available to the Commission. The Commission will:

- a) review all interim, supplementary, and final Space Shuttle Challenger accident investigation reports produced by NASA, or other governmental agencies, or industry that are contributed as a part of the investigation.
- b) review the stated cause or causes of the accident, the findings, corrective actions, and the recommendations.
- c) consider factors related to the accident which include shuttle orbiter component design assembly, mating and preparation for launch; shuttle orbiter component testing, checkout and flight operations procedures; and consider factors which discuss and evaluate launch site ground operations.
- d) consider mission preparation, conduct flight operations, and ground mission control monitoring findings.

e) consider organizational and management structures covered in investigation reports, specifically oriented to mission preparation for launch, error correction and quality control monitoring, launching, flight mission management, re-entry and recovery operations, and any administrative management structures that exist to ensure safe or reduced risk operations.

f) direct such further or additional investigations as may be necessary to ensure report completion.

g) develop such interim or final reports as may be necessary to support and endorse the NASA accident investigation report, challenge the NASA findings, or suggest re-evaluation of procedures, management or operations and make them available to the President.

h) the Commission will document its findings, determinations and recommendations and submit a final report to the President. The Commission will be supported in its endeavors by the National Security Council which will act as a secretariat, and which will ensure that all elements of the government will be made available for support, assistance and information.

Proposed Press Announcement

A Presidential Advisory Commission has been appointed to review the accident that befell the Space Shuttle Challenger after its launch from Cape Kennedy on January 27. The Commission will conduct a comprehensive study and review of the NASA Accident Investigation findings and will validate those results deemed prudent and thorough and will challenge those thought to be unsupported or incomplete. The Commission is not established in lieu of the NASA Accident Investigation Board nor should it be construed that there is a lack of expertise within NASA to do the investigation. The Commission will complement the NASA Board and provide its guidance on procedural changes, safety modifications, on shuttle orbiter production alterations that will ensure that future space flight missions are as safe as humanly possible, and that every possible action is taken to prevent the recurrence of tragedies like that of the Challenger Orbiter.

The Shuttle fleet is a national resource supporting national policies and goals for the use and exploration of space. Any action that causes the fleet to be grounded or causes United States access to space to be limited is of national concern. Therefore this Commission is comprised of individuals who have the background, education, training, experiences and national reputations in management, academia, or aerospace planning and engineering who can represent the President in a review of this magnitude.

The Commission will be chaired by _____, who will be assisted by _____. A review of a number of names is ongoing at this time to ensure they possess the necessary qualifications to serve, and that the Commission Chairman concurs.

The Administration, NASA and the Commission recognize the importance of resuming space launch activities as soon as possible, but not until we are sure that all facts about the accident are understood and corrective measures are implemented. The Commission report therefore, will be presented to the President as soon as practical after the NASA Accident Investigation is complete. No date has been set for completion of the NASA report.

tled to payments under any formula-driven calculations specified in the substantive law. Deobligations may include budgetary resources obligations for which checks have not been issued or funds not otherwise disbursed (funds obligated but unexpended).

Also, the head of each Department or agency shall report the programs, projects, and activities information required by section 252(a)(5)(A) and (B) to the President of the Senate, the Speaker of the House, the Director of the Office of Management and Budget, and the Comptroller General, as instructed by the Director of the Office of Management and Budget in Bulletin No. 86-7. For those programs in the National Defense function that have already been reported by program, project, and activity, no additional report is necessary. The reports of the Departments and agencies are hereby incorporated in this Order.

I further direct the Director of Central Intelligence to report the programs, projects, and activities information required by section 252(a)(5)(A) and (B) on a classified basis to the appropriate committees of the Congress for the National Foreign Intelligence Program consistent with paragraphs 1 through 3 of this Order and to so advise the President of the Senate, the Speaker of the House, the Director of the Office of Management and Budget, and the Comptroller General, as instructed by the Director of the Office of Management and Budget.

In accordance with section 252(a)(6)(A), amounts suspended, sequestered or reduced under this Order shall be withheld from obligation and amounts suspended or sequestered shall be permanently cancelled as of March 1, 1986, unless alternative legislation is enacted prior to that date.

This Order shall be reported to the Congress and shall be published in the *Federal Register*.

Ronald Reagan

The White House,
February 1, 1986.

[Filed with the Office of the Federal Register, 10:56 a.m., February 3, 1986]

Note: The Order is printed in the Federal Register of February 4, 1986.

National Afro-American (Black) History Month, February 1986

Message of the President. February 1, 1986

Black history is a book filled with rich and unexplored pages. It reached a memorable milestone this very year when the birthday of Dr. Martin Luther King, Jr., became a Federal holiday. This new Federal holiday celebrates more than the faith, leadership, and heroism of one man. It does more than celebrate his splendid achievements or the trail he blazed for others. It symbolizes the struggle of many Americans for full and unfettered recognition of the Constitutional rights of all Americans regardless of race or color.

Black history in the United States has been a proving ground for America's ideals. The first great test of our political good faith came with the Civil War and the rooting out of slavery as an institution. The second came a century later, in the struggle for the recognition of the rights already won in principle—the abolition of second-class citizenship. To make Americans aware of these struggles, and of all that preceded and followed them, is a foremost purpose of Black History Month. It is also a time to celebrate the achievements of blacks in every field from science and the arts to politics and religion.

It not only offers black Americans an occasion to explore their heritage, but it also offers all Americans an occasion and an opportunity to gain a fuller perspective of the contributions of black Americans to our nation. Let us appreciate this opportunity and build on it.

Ronald Reagan

Presidential Commission on the Space Shuttle Challenger Accident

Executive Order 12546. February 3, 1986

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to

establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Presidential Commission on the Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, and the scientific, technical, and management communities.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall investigate the accident to the Space Shuttle Challenger, which occurred on January 28, 1986.

(b) The Commission shall:

(1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and

(2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

Sec. 3. Administration. (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Commission with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of the National Aeronautics and Space Administration, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after submitting its final report.

Ronald Reagan

The White House,
February 3, 1986.

[Filed with the Office of the Federal Register, 4:37 p.m., February 3, 1986]

Presidential Commission on the Space Shuttle Challenger Accident

Remarks Announcing the Commission's Formation. February 3, 1986

It's been almost a week since our nation and families stood together as we watched *Challenger* slip beyond our grasp. The memories of that moment will be with us always, as will the memories of those brave Americans who were aboard. The death of the astronauts and the destruction of the space shuttle *Challenger* will forever be a reminder of the risks involved with space exploration, and we will always remember the *Challenger* Seven.

As we move away from that terrible day, we must devote our energies to finding out how it happened and how it can be prevented from happening again. It's time now to assemble a group of distinguished Americans to take a hard look at the accident, to make a calm and deliberate assessment of the facts and ways to avoid repetition. So, I am today announcing the formation of a Presidential Commission on the Space Shuttle Challenger's Accident.

The Commission will review the circumstances surrounding the accident, deter-

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mine the probable cause or causes, and develop recommendations for corrective action. And this Commission will report back to me within 120 days.

William P. Rogers, former Secretary of State and former Attorney General, will serve as Chairman of the Commission; and Neil Armstrong, former astronaut, will serve as its Vice Chairman. In addition, today we're announcing 10 of its members drawn from distinguished leaders of the government, scientific, technical, and management communities.

The crew of the *Challenger* took the risks and paid the ultimate price because they believed in the space program. They were excited by the mystery of what is beyond the Earth and to the limitless possibilities of space exploration. They knew of the dangers they faced. Yet despite those dangers, they chose to go forward, not reluctantly, but eagerly and with the thumbs up. And we owe it to them to conduct this investigation so that future space travelers can approach the conquest of space with confidence and America can go forward with enthusiasm and optimism which has sparked and marked all of our great undertakings.

This is the end of the statement here, but I understand that these gentlemen and Dr. Graham are going over to the press room, where they can field some of your questions on this. Thank you all.

Note: The President spoke at 2:05 p.m. in the Roosevelt Room at the White House.

In his remarks, the President referred to Dr. William R. Graham, Acting Director of the National Aeronautics and Space Administration.

Presidential Commission on the Space Shuttle Challenger Accident

Appointment of 12 Members, and Designation of Chairman and Vice Chairman. February 3, 1986

The President today announced the following individuals to be members of the Presidential Commission on the Space Shut-

tle Challenger Accident. He designated William P. Rogers, former Secretary of State and Attorney General, as Chairman; and Neil A. Armstrong, former astronaut and chairman of the board of Computing Technologies for Aviation, Inc., as Vice Chairman.

William P. Rogers, former Secretary of State (1969-1973) and Attorney General (1957-1961), currently a practicing attorney. Awarded the Medal of Freedom in 1973, he was born in Norfolk, NY, and currently is affiliated as a partner with the law firm of Rogers & Wells in New York City.

Neil A. Armstrong, former astronaut, joined NASA in 1958, currently is chairman of the board of Computing Technologies for Aviation, Inc., of Charlottesville, VA. Born in Wapakoneta, OH, Mr. Armstrong was spacecraft commander for Apollo 11, July 16-24, 1969, the first manned lunar landing mission. He left NASA in 1971 to assume the position of professor at the University of Cincinnati, where he taught aeronautical engineering until 1980. He was appointed to the National Commission on Space in 1985.

Brig. Gen. Charles ("Chuck") Yeager, (USAF, Ret.), former experimental test pilot, appointed in 1985 to the National Commission on Space. Born in Myra, WV, he currently resides in Cedar Ridge, CA, where he is an aerospace consultant. He is the recipient of two unique aviation records, having been the first man to have penetrated the sound barrier and the first to fly at a speed of more than 1,600 miles an hour, which he achieved in December 1953.

Dr. Sally K. Ride, astronaut, born in Los Angeles, CA, currently resides in Houston, TX. She was a mission specialist on STS-7, which launched from Kennedy Space Center, FL, on June 18, 1983, and thus became the first American woman in space. This was also the second flight for the orbiter *Challenger* and the first mission with a 5-person crew. She holds a doctorate in physics (1978) from Stanford University and is training as a mission specialist.

Dr. Albert D. ("Bud") Wheelon, physicist and currently a member of the President's Foreign Intelligence Advisory Board, appointed in 1981. Born in Moline, IL, he is currently affiliated with Hughes Aircraft Co., where he serves as senior vice president and group president, space and communications group. He holds a doctorate in physics (1952) from Massachusetts Institute of Technology and served as a consultant (1961-1974) to the President's Science Advisory Council.

Robert W. Rummel, long-time space expert and formerly vice president of TWA, Inc. (1943-1959) (engineering). Born in Dakota, IL, he is currently president of Robert W. Rummel Associates, Inc., of Mesa, AZ. An aerospace engineer, he is a member of the National Academy of Engineering and has been awarded the NASA Distinguished Public Service Medal.

Dr. Arthur B.C. Walker, Jr., professor of applied physics, Stanford University. Born in Cleveland, OH, he holds a doctorate in physics (1962) from the University of Illinois (Urbana). He is a consultant to Aerospace Corp., Rand Corp., and R&D Associates, Los Angeles. He is a member of the American Physicists Society, American Geophysical Union, American Astronomy Society, and the International Scientific Union.

Richard P. Feynman, physicist. Born in New York City, he is professor of Theoretical physics at California Institute of Technology, Pasadena, CA. He holds a doctorate in physics (1942) from Princeton and received the Nobel Prize in Physics in 1965. He also received the Einstein Award in 1954, the Oersted Medal in 1972, and the Niels Bohr International Gold Medal in 1973.

Eugene E. Covert, educator, engineer. Born in Rapid City, SD, he is currently a professor of aeronautics at Massachusetts Institute of Technology. He is a consultant to NASA on rocket engines. In 1973 he was recipient of the Exceptional Civilian Service Award, USAF, and in 1980 received the NASA Public Service Award.

Robert B. Hotz, editor, publisher. Born in Milwaukee, WI, he is the former editor of *Aviation Week and Space Technology* magazine, 1953-1980. An author, he has received numerous journalism awards, including the Press Award from the National Space Club, 1965. Since 1982 he has been a member of the General Advisory Committee to the Arms Control and Disarmament Agency. He is a member of the White House Correspondents Association.

David C. Acheson, former senior vice president and general counsel, Communications Satellite Corp. (1967-1974), he is currently a partner in the Washington, DC, law firm of Drinker, Biddle and Reath. Born in the Nation's Capital, he has previously served as an attorney with the U.S. Atomic Energy Commission (1948-1950) and U.S. Attorney for the District of Columbia (1961-1965). He holds an LL.B. from Harvard University (1948).

Maj. Gen. Donald J. Kutyna, USAF, director of Space Systems and Command Control and Communications. Born in Chicago, IL, he holds a B.S. from the United States Military Academy

(1957), master of science in aeronautics and astronautics from Massachusetts Institute of Technology (1965). A command pilot with 4,000+ flying hours, he served as program manager for the AWACS for foreign military sales. Former manager of the Department of Defense space shuttle program (1982-1984), he managed design and construction of the west coast shuttle launch facility. He is the recipient of the Distinguished Service Medal, Legion of Merit, Distinguished Flying Cross, and nine air medals.

National Council on Educational Research

*Nomination of David Alan Heslop To Be a Member, and Designation as Chairman.
February 3, 1986*

The President today announced his intention to nominate David Alan Heslop to be a member of the National Council on Educational Research. Upon confirmation, he will be designated Chairman.

Since 1981 Dr. Heslop has been Rose professor of politics, Claremont McKenna College, and since 1974 he has been director of the Rose Institute of State and Local Government, Claremont, CA. From 1974 to 1977, he was dean of the faculty, Claremont Men's College. From 1971 to 1974, and again from 1980 to 1984, he was chairman, department of political science, Claremont Men's College. He was an associate professor of political science at Claremont, 1974-1981, and an assistant professor, 1968-1974. Dr. Heslop began his academic career as a teaching assistant, department of government, University of Texas, 1962-1964.

Dr. Heslop graduated from Magdalen College, Oxford University (B.A., M.A., 1961), and the University of Texas (Ph.D., 1968). He is married and has three children. He was born February 12, 1938, in Westcliffe-on-Sea, England, and resides in Claremont, CA.

pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

Subpart 9—Annual Report

§ 1206.900 Requirements for annual report.

On or before March 1 of each calendar year, NASA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(a) The number of determinations made by NASA not to comply with requests for records made to the Agency under Subpart 6 of this part and the reasons for each such determination;

(b) The number of appeals made by persons under Subpart 6 of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4) (B) through (G) (see § 1206.800(c)), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of the current version of this Part 1206 and any other rules or regulations made by NASA regarding 5 U.S.C. 552;

(f) A copy of the current fee schedule and the total amount of fees collected by NASA for making records available under this part; and

(g) Such other information as indicates efforts by NASA to administer fully this part.

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- 1207.735-800 Scope of subpart.
 - 1207.735-801 Exemption for scientific and technological communications.
- AUTHORITY:** E.O. 11222, of May 11, 1965; 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.104, unless otherwise noted.

SOURCE: 32 FR 14648, Oct. 21, 1967, unless otherwise noted.

§ 1207.735-1 Scope of part.

The provisions of this part prescribe regulations for the maintenance of the high ethical standards of conduct required of NASA employees, including special Government employees as they are covered by this part in carrying out their duties and responsibilities.

§ 1207.735-2 Applicability.

(a) The provisions of Subparts A, B, C and D of this part are applicable to:

(1) All regular officers and employees of NASA (referred to hereinafter as "employees"), but not special Government employees as defined in § 1207.735-601(a), and

(2) All civilian and military personnel of other Government agencies regularly detailed to NASA. (Also referred to hereinafter as "employees".)

(b) The provisions of Subpart E are applicable to:

(1) NASA employees except special Government employees as defined in § 1207.735-601(a), and

(2) Civilian and military personnel of other Government agencies regularly detailed to NASA; however, disciplinary action may be effected against such civilian or military personnel only by the parent employing agency or military service.

(c) The provisions of Subpart F are applicable only to special Government employees as defined in § 1207.735-601(a).

(d) The provisions of Subpart H are applicable only to former NASA government employees.

(18 U.S.C. 207; 5 CFR Part 737)

[32 FR 14648, Oct. 21, 1967, as amended at 46 FR 51381, Oct. 20, 1981]

Subpart A—General Provisions

§ 1207.735-100 Ethical standards of conduct.

Each NASA employee will refrain from any use of his official position which is motivated by, or has the appearance of being motivated by, the desire for private gain for himself or other persons. He must conduct himself in such a manner that there is not the slightest suggestion of the extracting of private advantage from his Government employment. Pursuant to this policy, each NASA employee will observe the following standards of conduct:

(a) He will not as a result of, or on the basis of any information derived from his official position or from the official position of other NASA employees with whom he associates, engage, directly or indirectly, in any business transaction or arrangement, including the buying or selling of securities or recommending the purchase or sale of securities to other persons.

(b) He will exercise care in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of performing his Government duties.

(c) If he acquires information in the course of performing his Government duties that is not generally available to those outside the Government, he will not use this information to further a private interest or for the special benefit of a business or other entity in which he has a financial or other interest.

(d) He will not use his Government position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or to other persons.

(e) He will avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this part), which might result in, or create the appearance of:

(1) Using his public office for private gain;

(2) Giving preferential treatment to any organization or person;

(3) Impeding Government efficiency or economy;

(4) Losing his independence or impartiality of action;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1207.735-101 Other general standards of conduct.

(a) *Use of Government property.* An employee will not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

(b) *Indebtedness.* The indebtedness of NASA employees is considered to be essentially a matter of their own concern. Except as otherwise provided by law, NASA will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, NASA employees are expected to honor in a proper and timely manner, debts which are acknowledged by the employee to be valid or which have been reduced to final judgment by a court, or to make or adhere to satisfactory arrangements for the settlement of such debts. In accordance with Pub. L. 93-647 (42 U.S.C. 659), NASA may become involved in the attachment of NASA employee wages or salary for enforcement of child support and alimony obligations. Employees are also expected to meet their responsibilities for payment of Federal, State, and local taxes. For the purpose of this subparagraph, "in a proper and timely manner" means in a manner which NASA determines does not, under the circumstances, reflect adversely on NASA as the employing agency.

(c) *Gambling, betting, and lotteries.* While on Government owned or leased property, or while on duty for the Government, NASA employees will not participate in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in participating in a game for money, or property; or in selling or purchasing a numbers slip or ticket. However, participation in federally sponsored fund-raising activities conducted pursuant to Executive Order 10927, or in similar NASA-approved activities, is not precluded.

(d) *General conduct prejudicial to the Government.* NASA employees will not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.

(e) [Reserved]

(f) *Miscellaneous statutory provisions.* Each employee will become acquainted with the statutory provisions that relate to his ethical and other conduct, among which the following are particularly relevant:

(1) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflict of interests, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibitions against (i) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (ii) the disclosure of private or proprietary information (18 U.S.C. 1905).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government motor vehicle or aircraft (31 U.S.C. 638a(c)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibitions against proscribed political activities ("The Hatch Act"—5 U.S.C. 7324-7327; 18 U.S.C. 602, 603, 607, and 608).

(17) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(18) The prohibition against a public official appointing, employing, promoting or advancing a relative of the official in his agency, or advocating any such actions in his agency for such a relative (5 U.S.C. 3110).

(19) The prohibition against (i) the disclosure of crop information and speculation thereon (18 U.S.C. 1902); and (ii) the issuance of false crop reports (18 U.S.C. 2072).

(20) The prohibition against the acceptance of excessive honorariums (Pub. L. 94-283).

The foregoing statutes are available for review in the appropriate installation Counsel's office.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 2632, Jan. 19, 1976; 41 FR 31526, July 29, 1976]

Subpart B—Acceptance of Gifts, Gratuities, or Entertainment

SOURCE: 41 FR 2632, Jan. 19, 1976, unless otherwise noted.

§ 1207.735-200 Scope of subpart.

This part establishes NASA policy with respect to the acceptance of gifts, gratuities, entertainment (including food, refreshments, tickets or invitations to performances and other events), favors, loans, transportation, accommodations, or any other thing of monetary value by NASA employees. Any violation of these regulations and/or any of the criminal statutes referred to herein will subject the employee to administrative disciplinary action and/or criminal prosecution.

§ 1207.735-201 Policy.

(a) It is NASA policy not to interfere in the private lives of NASA employees and their families. However, certain conduct involving acceptance of gifts, gratuities, entertainment (including food, refreshments, tickets or invitations to performances and other events), favors, loans, transportation, accommodations, or any other thing of monetary value must be regulated in view of the nature of the official duties of the employee and the special responsibilities that are assumed by a person who accepts Federal employment.

(b) Except as provided in paragraphs (d), (f), and (g) of this section, the direct or indirect solicitation or acceptance by a NASA employee or his spouse or minor child of any gift, gratuity, entertainment (including food, refreshments, tickets or invitations to performances and other events), favors, loans, transportation, accommodations, or any other thing of monetary value from any person, corporation, or group is forbidden if the person, corporation or group:

- (1) Has or is seeking to obtain contractual or other business or financial relationships with NASA; or
- (2) Has interests which may be substantially affected by such employee's performance or nonperformance of his official duty; or
- (3) Is in any way attempting to affect the employee's official action.

(c) There are certain exceptions to the foregoing general rule which are set forth in paragraph (d) of this section. Those exceptions are to be strictly construed. In determining whether one or more of the exceptions apply in any particular circumstance, each NASA employee shall avoid any situation having an appearance which might, whether justifiably or not, bring discredit to or embarrass the Government or NASA. Each NASA employee will so govern his conduct in the light of this part as to have no difficulty in justifying his actions if required to do so.

(d) The following are exceptions to the general rule set forth in paragraph (b) of this section:

(1) Acceptance of food and soft drinks of nominal value at a contractor's plant on an infrequent basis when the conduct of official business within the plant will be facilitated and when no provision can be made for individual payment. An employee shall avoid all other situations, e.g., in private clubs, where there would be no provision for individual payment for his food or refreshments.

(2) Instances in which the interests of the Government are served by participation of a NASA employee in widely attended luncheons, dinners, and similar gatherings sponsored by industrial, technical, or professional associations for the discussion of matters of mutual interest. Participation in such events is permitted only when the host is the association and not a private company and only when approved by the employee's supervisor as being a part of or related to his official duties. Acceptance of gratuities, food, or refreshments from a private company in connection with such association's activities is forbidden.

(3) Acceptance of gifts, favors, or entertainment, where there is a family relationship between the employee, or between his spouse, children, or parents, and the donor, where the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the gift, favor, or entertainment, and where it is clear that the gift, favor, or entertainment

is paid for by the donor and not by a private company.

(4) Acceptance of modest food and refreshments at the host's home, where there is an obvious personal relationship between the employee and the host, where it is clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the food and refreshments, and where it is clear that the food and refreshments are paid for by the host and not by a private company.

(5) Purchase of articles at advantageous rates where such rates are offered to Government employees as a class.

(6) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(7) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of trivial value, clearly less than \$5.00.

(8) Acceptance of contractor-provided local or intrastate transportation while on official business when alternative arrangements are clearly impracticable or where such acceptance will facilitate the conduct of official business. Acceptance of intrastate transportation is permitted only when specifically authorized in the employee's travel authorization, or otherwise authorized in writing by the employee's supervisor, as being in the interest of the Government.

(9) Acceptance of transportation, accommodations, subsistence, or services furnished under a reimbursable arrangement with NASA, from an industrial, technical, or professional association, when authorized in the employee's travel authorization as being in the interest of the Government. When transportation, accommodations, subsistence, or services are furnished in kind by such an association, appropriate deductions shall be made in the travel, per diem, and other allowances otherwise payable to the employee. When transportation, accommodations, subsistence, or services are provided under a cash reimbursable arrangement, the reimbursement must

be paid directly to NASA by check payable to the National Aeronautics and Space Administration; the employee will be reimbursed for necessary expenses by NASA in accordance with applicable laws and regulations. In no case shall a NASA employee accept benefits which are under prudent standards extravagant or excessive in nature.

(10) Special situations in which the Associate Administrator for Center Operations, after consultation with the General Counsel, determines in advance in writing that the interest of the Government will be served by an employee's participation, in his official capacity and as a designated NASA representative, in a public ceremony or other event at the expense of a private company.

(11) Acceptance of transportation or other services provided by a private company in special situations in which the Administrator or the Deputy Administrator determines in advance in writing that acceptance of such transportation or other services will facilitate the conduct of official business and be in the best interest of the Government.

(e) A gift or gratuity, the receipt of which is prohibited under paragraph (b) of this section, will be returned to the donor. If return is not possible, the gift or gratuity will be turned over to a public or charitable institution and a report of such action, and the reasons why return was not feasible, will be made to the employee's supervisor. When possible, the donor should also be informed of such action.

(f) An employee will not solicit a contribution from another employee for a gift to an official superior make a donation as a gift to an official superior, or accept a gift presented as a contribution from an employee receiving less salary than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness or death, or retirement.

(g) An employee will not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as pro-

vided by the Constitution and in 5 U.S.C. 7342 (see NASA instruction NMI 1030.1A).

§ 1207.735-202 Statutory prohibitions.

The prohibitions set forth in § 1207.735-201 are to be construed as being in addition to and not in limitation of:

(a) The prohibitions of 18 U.S.C. 201, as amended, relating to the corrupt solicitation or receipt of, or agreement to receive, anything of value in connection with an employee's performance of his official duty; and

(b) The prohibitions of 18 U.S.C. 203, as amended, relating to the unlawful solicitation or receipt of, or agreement to receive, compensation for services rendered by an employee in connection with matters affecting the Government.

Subpart C—Outside Employment and Other Activity

§ 1207.735-300 Scope of subpart.

This subpart prescribes NASA policy and procedures regarding outside employment or other outside activity of NASA employees.

§ 1207.735-301 Definition.

As used in this subpart, the term "outside employment or other outside activity" refers to any work, service, or other activity performed by an employee other than in the performance of his official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting services, self-employment, and other work, or services, with or without compensation.

§ 1207.735-302 Policy.

(a) NASA employees are permitted to engage in outside employment or other outside activity that is compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Guidelines for determining compatibility are set forth in § 1207.735-303.

(b) NASA employees are encouraged to participate as private citizens in the affairs of their communities provided that the limitations prescribed below,

and otherwise by these regulations, are observed. Among these activities may be the following:

(1) Speaking, writing, editing, and teaching.

(2) Participation in the affairs of charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, and the acceptance of an award for a meritorious public contribution or achievement from any such organization.

(3) Participation in the activities of national, State, and local political parties not proscribed by law. In this connection employees should be particularly aware of the restrictions imposed on their activities by the "Hatch Act" (5 U.S.C. 7324-7327).

§ 1207.735-303 Guidelines and limitations.

Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities, and hence is prohibited, if:

(a) It would involve the violation of a Federal or State statute, a local ordinance, Executive order, or regulation to which the employee is subject.

(b) It would give rise to a real or apparent conflict of interests situation even though no violation of a specific statutory provision was involved.

(c) It would involve acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interests.

(d) It might bring discredit upon, or reasonably cause unfavorable criticism of, the Government or NASA or lead to relationships which might impair public confidence in the integrity of the Government or NASA.

(e) It would involve work with any contractor or subcontractor which is connected with any work being performed by that entity for NASA or would otherwise involve work for any person or organization which may be in a position to gain advantage in its dealings with the Government through the exercise of the employee's exercise of his official duties.

(f) It would identify NASA or its employee officially with any organization manufacturing, distributing, or advertising a product relating to work conducted by NASA, or would create the false impression that it is an official action of NASA, or represents an official point of view. In any permissible outside employment, care must be taken to insure that names and titles of NASA employees are not used to give the impression that the activity or product is officially endorsed or approved by NASA or is part of NASA activities.

(g) It would involve use of the employee's time during his official working hours.

(h) It would involve use by the employee of official facilities, e.g., office space, office machines, or supplies, or the services of other employees during duty hours.

(i) It would be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair his mental or physical capacity to perform them in an acceptable manner.

(j) It would involve use of information obtained as a result of Government employment which is not freely available to the general public in that it either has not been made available to the general public or would not be made available on request. However, written authorization for the use of nonpublic information may be given when the head of the field or component installation or, at NASA Headquarters, the Associate Administrator for Associate Administrator for Center Operations, as appropriate, determines that such use would be in the public interest.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

§ 1207.735-304 Distinction between official and nonofficial activities.

In applying the provisions of this subpart, particularly with regard to writing, speaking, or editing activities, NASA employees must distinguish between official and nonofficial activities. In connection with writing, speaking or editing, an activity will normally be considered official if:

(a) It is the result of a request addressed to NASA to furnish a speaker, author, or editor or of an invitation addressed to an employee of NASA to perform these activities in his official capacity, rather than as a private individual; or

(b) The activity is performed in conjunction with attendance at a meeting approved under the authority of 5 U.S.C. 4110 (formerly the Government Employees Training Act).

The fact that an activity was prepared for outside of duty hours or was performed after normal duty hours is not determinative of whether it is official or nonofficial.

§ 1207.735-305 Compensation, honorariums, travel expenses.

(a) An employee may accept compensation or an honorarium for permissible outside employment or other outside activity which is nonofficial in character unless otherwise prohibited by this subpart.

(b)(1) Except as provided in § 1207.735-201(d)(9) and in paragraph (b)(2) of this section, travel expenses will be borne by the Government when official employment activities of NASA employees are involved, including attendance at meetings of nongovernmental organizations. Conversely, when nonofficial outside employment activities are involved, appropriated funds will not be utilized for travel or subsistence.

(2) Contributions and awards incident to training in non-Government facilities and travel, subsistence, and other expenses incident to attendance at meetings may be accepted by NASA employees, provided that such contributions, awards, and payments are made by non-profit organizations pursuant to 5 U.S.C. 4111 (formerly the Government Employees Training Act), and that the employee has obtained specific written authorization to accept the contribution or award.

(3) No employee shall accept (i) any honorarium of more than \$2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and spouse or aide, and excluding amounts paid or incurred for agents' fees or commission) for any

appearance, speech, or article, or (ii) honorariums aggregating more than \$25,000 in any calendar year (Pub. L. 94-283, section 328). The provisions of this paragraph apply whether the appearance, speech or article is approved as permissible outside employment under this subpart, or pertains to the private interests of the employee.

[41 FR 2633, Jan. 19, 1976, as amended at 41 FR 31526, July 29, 1976; 41 FR 35479, Aug. 23, 1976]

§ 1207.735-306 [Reserved]

§ 1207.735-307 Special conditions applicable to writing and editing.

(a) Subject to the limitations set forth in § 1207.735-303, NASA employees may serve as editors, as editorial consultants, or on editorial boards, and may contribute articles to publications issued by nonprofit organizations or by profit organizations involved in trade or news press publishing.

(b) Publication associated with organizations in the nonprofit category are those such as the National Geographic Society.

(c) The profit category of publications includes textbooks, hand books, magazines, journals, and newspapers. Editing activities for profit organizations should be carefully appraised. Under no circumstances should the activity involve approval or disapproval of advertising.

(d) Writing and editing, with or without pay, which pertain to the private interests of employees regarding hobbies, sports, or cultural activities are permitted unless there are actual or apparent conflicts with their officially assigned duties.

§ 1207.735-308 Administrative approval.

The provisions of this section will be observed with respect to all outside employment or other outside activity. Each employee must be alert to identify and to avoid any situation that would involve him in prohibited activity. Aside from avoiding prohibited outside employment or other outside activity, each employee must also obtain administrative approval in accordance with Appendix A to this subpart before engaging in outside employment of the following types:

(a) Writing or editing except those activities set out in § 1207.735-307(d).

(b) Speaking engagements except where the subject matter is unrelated to the subject matter of the employee's official duties.

(c) Teaching and lecturing.

(d) Regular self-employment.

(e) Consulting services.

(f) Holding State or local public office.

(g) Outside employment or other outside activity involving a NASA contractor or subcontractor.

(h) Any other outside work concerning the propriety of which an employee is uncertain.

Prior administrative approval may be required for additional types of outside employment where, because of special considerations, such a requirement is considered desirable for the protection of employees or NASA.

§ 1207.735-309 Related statutory provisions.

Several criminal statutory provisions restrict certain types of outside activities on the part of employees, as follows:

(a) 18 U.S.C. 203 imposes criminal penalties upon an employee who, other than in the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another in relation to any proceeding, application, request for a ruling or other determination, contract, claim controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, courtmartial, officer, or any civil, military, or naval commission.

(b)(1) 19 U.S.C. 205 imposes criminal penalties upon an employee who other than in the proper discharge of his official duties—

(i) Acts as agent or attorney for prosecuting any claim against the United States or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(ii) Acts as agent or attorney for anyone before any department, agency, court, courtmartial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest.

(2) Exceptions to the foregoing prohibitions are as follows:

(i) If not inconsistent with the faithful performance of his duties, an employee may act, without compensation, as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

(ii) An employee may act, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

(c)(1) Under 18 U.S.C. 209 an employee is prohibited from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the Government, from any source other than the Government of the United States except as may be contributed out of the treasury of any State, county or municipality, or except as may be paid under the terms of 5 U.S.C. 4101 to 4118 (formerly the Government Employees Training Act).

(2) Exceptions to the prohibitions of 18 U.S.C. 209 are also made for those employees continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan

maintained by a former employer. However, such financial interests may still violate 18 U.S.C. 208 unless waived. (See Subpart D, Appendix B, paragraph 4.)

(d) Pub. L. 94-283, section 328 provides:

No person while an elected or appointed officer or employee of any branch of the Federal Government shall accept—

(1) Any honorarium of more than \$2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article; or

(2) Honorariums (not prohibited by paragraph (d)(1) of this section) aggregating more than \$25,000 in any calendar year.

Violation of this section can result in a substantial civil penalty amounting to \$5,000, \$10,000, or higher, depending on the circumstances.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

APPENDIX A—PROCEDURES FOR PERMISSION TO ENGAGE IN OUTSIDE EMPLOYMENT OR OTHER OUTSIDE ACTIVITY (see § 1207.735-308)

1. *Form and content of request.* A request for administrative approval of outside employment or other outside activity shall be in writing and show:

a. Employee's name and occupational title.

b. Nature of the activity: full description of specific duties or services to be performed.

c. Name and business of person or organization for which the work will be done. (In the case of self-employment in a professional capacity serving a large number of individuals, instead of listing each client, the type of services to be rendered and estimate of the total number of clients anticipated during the next 6 months will be indicated.)

d. Estimated total time that will be devoted to the activity. (If on a continuing basis, the estimated time per year; if not, the anticipated ending date.)

e. Whether service can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work that will be required.

2. *Routing.* The request for approval will be submitted (in duplicate) to the appropriate Official-in-Charge of the Headquarters Office or to the head of the field or component installation or to the persons designat-

ed to act for them. Employees will be notified in writing of the actions taken on their requests. All approved requests (or copies of such requests) and two copies of the notification of the approval action will be maintained in the local Personnel Office as follows:

a. A special file on outside employment, separated by title of types of employment.

b. A copy in the personnel folder of the employee concerned.

3. *Keeping record up to date.* If there is a change in the nature or scope of the duties or services performed or the nature of his employer's business, the employee will submit a revised request for approval promptly. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), he will notify the officer who approved the request.

4. *Enforcement.* Failure to request administrative approval for outside employment or other outside activity for which approval is required is ground for disciplinary action.

5. *Confidentiality of requests.* All requests for approval will be treated as confidential and made available only to specifically authorized persons.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

Subpart D—Financial Interests and Investments

§ 1207.735-400 Scope of subpart.

This subpart prescribes policies and procedures for the avoidance of conflicting financial interests in connection with an employee's Government position or in the discharge of his official responsibilities, and sets out the requirements for reporting financial interests and outside employment.

§ 1207.735-401 General.

(a) Employees are subject to two types of controls in connection with apparent or actual conflicting financial interests. One is a criminal statute, 18 U.S.C. 208, which by its terms prohibits an employee's participation in certain official activities where he has a conflicting personal financial interest. The other is a requirement under Executive Order 11222 and Civil Service Commission regulations that employees occupying certain Government positions must report all personal financial interests and outside employment by filing a statement of employment and financial interests. The

statute and the statement of employment and financial interests have the common objective of deterring the occurrence of conflicting financial interest situations, one by sanctions and the other by disclosure, but where the statute prohibits and punishes, the statement of employment and financial interests is intended to serve as an aid to the employee and those who review his statement in the avoidance of the conflicting situation through advice and counseling.

(b) The statement of employment and financial interests (NASA Form 1270) required under this subpart is in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation, unless he obtains a waiver under procedures set out in this subpart.

(c) Notwithstanding the requirement under this subpart for filing a statement of employment and financial interests, and an annual supplement thereto an employee shall avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of 18 U.S.C. 208(a) or of this part.

§ 1207.735-402 Statutory prohibitions against acts affecting a personal financial interest.

(a) The provisions of 18 U.S.C. 208(a) prohibit any employee from participating personally and substantially in the course of his Government duties in any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in relation to which matter, to his knowledge, the following persons or organizations have a financial interest:

(1) The employee, or his spouse, minor child, or partners;

(2) A business or nonprofit organization in which the employee is serving

as an officer, director, trustee, partner, or employee; or

(3) A person or business or nonprofit organization with whom or with which the employee is negotiating, or has any arrangement with, concerning prospective employment.

(b) The prohibitions in paragraph (a) of this section may be waived under certain circumstances which are set out in § 1207.735-403.

(c) Illustrative of the types of matters in which NASA employees commonly participate and which may fall within the prohibitions described in paragraph (a) of this section are the following:

(1) The negotiation, administration, or auditing of contracts or agreements;

(2) The selection or approval of contractors or known subcontractors under a NASA prime contract;

(3) The technical monitoring or direction of work under a contract;

(4) Participation on boards or committees of the type listed in § 1207.735-404(a)(3); or

(5) Project monitoring.

(d) Unless a waiver is granted pursuant to § 1207.735-403, no NASA employee or civilian or military personnel of other Government agencies regularly detailed to NASA will participate personally and substantially in the course of his Government duties in any specific matter of a type listed in paragraph (c) of this section, or in any other matter of a type referred to in paragraph (a) of this section if, to his knowledge, any of the persons or organizations identified in paragraph (a) of this section have a financial interest relating to that specific matter.

§ 1207.735-403 Waiver of statutory prohibition.

(a) The prohibition of 18 U.S.C. 208 (a) may be waived in connection with a specific matter of the type which comes under the statute if the employee makes a full disclosure in writing of the nature of the matter involved and of the financial interest relating thereto and receives, in advance of his participation in such matter, a written determination that such financial interest is not so substantial as to affect the integrity of his services and, therefore, that the employee may partici-

pate personally and substantially in that matter. The procedures set forth in Appendix A to this subpart will be followed in connection with granting a waiver as described in this section.

(b) The prohibition of 18 U.S.C. 208(a) also may be waived by general regulation applicable to all NASA employees so as to permit an employee (including civilian and military personnel of other Government agencies regularly detailed to NASA) to participate personally and substantially in a specific matter, notwithstanding the existence of a financial interest relating to that matter, where it has been determined that such a financial interest is too remote or to inconsequential to affect the integrity of the employee's services in any matter in which he may act in his governmental capacity. Such a determination has been made by the Administrator with respect to the categories of financial interests set forth in Appendix B to this subpart.

§ 1207.735-404 Statement of employment and financial interests.

(a) The following criteria define the categories and types of employees who will file a statement of employment and financial interests, containing the kind of information required by the Civil Service Commission, on NASA Form 1270:

(1) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code, except the Administrator, who is subject to separate reporting requirements under section 401 of Executive Order 11222.

(2) Employees classified at the GS-13 level and above, under 5 U.S.C. 5332 or at comparable pay levels under other authority, unless otherwise exempted pursuant to paragraph (b) of this section, whose duties and responsibilities require the exercise of judgment in making a Government decision or in taking Government action in regard to:

(i) Contracting or procurement, including the evaluation or selection of contractors; the negotiation, approval, or award of contracts; the supervision of activities performed by contractors, including the administration, monitor-

ing, audit, and inspection of contractors and contract activities; and the initiation or approval of requests to procure supplies, equipment, or services, other than those common items available from NASA or GSA inventories:

(ii) Administering or monitoring grants or subsidies, including grants to educational institutions and other non-Federal organizations;

(iii) Auditing financial transactions;

(iv) Using or disposing of excess or surplus property;

(v) Establishing or enforcing safety standards and procedures.

(3) All employees, regardless of grade, serving as members of the following Boards or Committees:

(i) Source Evaluation Boards or Committees;

(ii) Inventions and Contribution Boards;

(iii) Contract Adjustment Board;

(iv) Board of Contract Appeals;

(v) Architect-Engineer Selection Boards; and

(vi) Site Selection Boards.

(4) Employees classified at the GS-13 level and above under 5 U.S.C. 5332, or at comparable pay levels under other authority, and who are identified by the head of a field or component installation or, at Headquarters, by the Assistant Administrator for Personnel Programs, as holding positions requiring the incumbent thereof to exercise judgment in making Government decisions or taking actions where such decisions or actions may have an economic impact on the interest of any non-Federal enterprise.

(5) Employees classified below the GS-13 level under 5 U.S.C. 5332, or at a comparable pay level under other authority, and who are in positions which otherwise meet the criteria of § 1207.735-404(a)(2) or § 1207.735-404(a)(4), providing the Civil Service Commission has approved the determination that the incumbents of such positions should be required to file statements of employment and financial interests in order to protect the integrity of the Government and to avoid the employee's involvement in a possible conflict of interests situation.

(b) An employee described in paragraph (a)(2) of this section may be ex-

empted from the requirement for filing a statement of employment and financial interests when the head of the field or component installation involved or, at Headquarters, the Assistant Administrator for Personnel Programs, determines that the employee's duties are of such a nature, or are at such a level of responsibility and are subject to such a degree of supervision and review, that the possibility of his becoming involved in a conflict of interests is remote.

(c) Procedures for filing statements of employment and financial interests are contained in Appendix C to this subpart.

(d) The following procedures will be followed with regard to the maintenance of statements of employment and financial interests. Each head of a field or component installation, and, at Headquarters, the Assistant Administrator for Personnel Programs, will maintain, on a current basis, a master list of employees required to file statements under this subpart. It will be this official's responsibility to determine that the list includes all those employees following within the criteria for reporting set forth in this subpart and that the requirement for filing statements is fully carried out on a timely basis. In the event of any question regarding the interpretation of these criteria, the official will consult the Agency Counselor of NASA directly.

(e) Any employee who considers that his position does not come within the criteria for reporting set forth in this subpart, and therefore that he should not be required to file a statement, may request a review, through the NASA grievance procedure, of the determination that his position does come within such criteria. The NASA grievance procedure is set forth in the Federal Personnel Manual, Chapter 771, and the NASA Supplement thereto.

(f) An employee who refuses to file a statement for reasons other than that his position does not come within the criteria for reporting set forth in this subpart, or who refuses to file after the determination that his position does come within such criteria has been reviewed, as provided in

§ 1207.353-404(e), and has been approved, will be subject to appropriate disciplinary action.

(g) Employee statements comprise a System of Records of the Civil Service Commission (CSC) under the Privacy Act of 1974. The General Counsel of NASA has been designated as the System Manager in the CSC System Notice. Statements forwarded to the appropriate personnel office in accordance with this part will be in sealed envelopes. Statements will be retained in a special locked cabinet or safe to which only the designated employees will have access. The head of the local personnel office will designate within his office one or more key employees who are authorized to open and examine statements for completeness. When a form is complete, it shall be promptly forwarded to a Deputy Counselor (Legal) for review pursuant to Subpart E. Statements will be retained in a special locked cabinet or safe to which only the designated employees will have access. Transmission of statements for legal review will be in a sealed envelope bearing the inscriptions "To Be Opened Only By (bearing the name of the individual authorized to review such statements)" and "Subject to the Privacy Act." Within each NASA legal office, procedures for limiting access to statements and for their safekeeping, as rigorous as those set forth for personnel offices, will be maintained. There will be no discussion or disclosure of the details of statements of employment and financial interests except as necessary to carry out the provisions of Subpart E. In accordance with the Privacy Act, information from a statement shall not be disclosed outside of NASA except as the Administrator or the Civil Service Commission shall determine for good cause shown. Within NASA, except for the examination and review process set forth in this paragraph, access to the employee statements will be permitted only upon the express approval of the General Counsel.

(h) This subpart does not require an employee to include in a statement of employment and financial interests, or supplementary statement, any information relating to the employee's con-

nection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business enterprise. For the purpose of this subpart, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's financial interest statement.

(i) Information concerning financial interests which have been exempted from the prohibition of 18 U.S.C. 208(a), as set forth in Appendix B to this subpart, may be omitted from the statement of employment and financial interests, except that, notwithstanding the exemption set forth in paragraph 1a of Appendix B, the ownership of securities in any amount in a company doing business with NASA will be disclosed if the employee's duties and responsibilities require the exercise of judgment in making a Government decision or in taking Government action in relation to that company.

[32 FR 14648, Oct. 21, 1967, as amended 41 FR 31526, July 29, 1976]

§ 1207.735-405 Executive personnel financial disclosure report.

(a) *Background.* The Ethics in Government Act of 1978 (Pub. L. 95-52) prescribes a public financial disclosure reporting requirement for certain officers and employees. The requirements and procedures are set forth in detail in the Act as well as in the implementing regulations of the Office of Government Ethics (5 CFR Part 734). This section will not reiterate these detailed requirements nor the instructions for filing that are contained in the Executive Personnel Financial Disclosure Report (SF 278).

(b) *Employees required to file.* Following are NASA employees required to file the Executive Personnel Financial Disclosure Report.

(1) Presidential nominees to positions requiring the advice and consent of the Senate.

(2) Officers and employees (including Special Government Employees) who have served in their positions for 61 days or more during the preceding calendar year whose positions are classified or paid at GS-16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the rate for GS-16. This category includes members of the Senior Executive Service.

(3) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16.

(4) Administrative law judges.

(5) Employees in the excepted service in positions which are of a confidential or policymaking character unless their positions have been excluded by the Director of the Office of Government Ethics.

(6) The Designated Agency Ethics Official.

(c) *Time of filing*—(1) *Initial appointment*. Within 5 days after transmittal by the President to the Senate of the nomination to a position described in paragraph (b)(1) of this section or within 30 days after first assuming a position described in paragraphs (b) (2), (3), (4), (5), or (6) of this section, an Executive Personnel Financial Disclosure Report (SF 278) must be filed.

(2) *Incumbents*. An Executive Personnel Financial Disclosure Report must be filed no later than May 15 annually by incumbents of any of the positions listed in paragraph (b) of this section. In certain cases an extension of up to 45 days for filing may be permitted by the Designated Agency Ethics Official. The Director of the Office of Government Ethics may grant an additional 45-day extension, for good cause shown.

(3) *Terminations*. The individual shall file an Executive Personnel Financial Disclosure Report no later than 30 days after an incumbent of a position listed in paragraph (b) of this section terminates that position.

(d) *Place of filing*. All reports required to be filed by this section by Headquarters Employees, Directors, Deputy Directors and Chief Counsels of field installations shall be submit-

ted on or before the due date to the Director, Office of Development, Personnel Programs Division, Code NPD, NASA Headquarters. Other field installation personnel required to file reports by this section shall submit such reports on or before the due date to the Field Installation Director of Personnel.

(e) *Review and retention of reports*. All reports required to be filed with the Director, Office of Development, Personnel Programs Division, Code NPD, NASA Headquarters, will be reviewed by the Designated or Alternate Agency Ethics Counselor, Office of the General Counsel. Reports required to be filed by field installation personnel with the Field Installation Director of Personnel will be reviewed by the Field Installation Chief Counsel. All reports required to be filed by this section will be sent, after review, to the Director, Office of Development, Personnel Programs Division, Code NPD, NASA Headquarters, for retention. The reports will be available to the public.

(f) *Where to seek help*. To seek assistance in completing the Executive Personnel Financial Disclosure Report, contact the Field Installation Chief Counsel or the Assistant General Counsel for General Law at Headquarters.

(g) *Failure to submit report*. Falsification of or knowing or willful failure to file or report information required to be filed by section 202 of the Ethics in Government Act may subject the individual to a civil penalty and to disciplinary action. Also, knowing or willful falsification of information under that section may subject the individual to criminal prosecution under 28 U.S.C. 1001, leading to a fine of not more than \$10,000, or imprisonment for not more than 5 years, or both.

[50 FR 3888, Jan. 29, 1985]

APPENDIX A—WAIVER PROCEDURES (see § 1207.735—403(a))

1. Employees appointed under authority of section 203(c)(2)(A) ("NASA Excepted Positions") or section 203(b)(10) ("Alien Scientists") of the National Aeronautics and

Space Act of 1958 (42 U.S.C. 2473(C)(2)(A) and 2473(b)(10)); or under 5 U.S.C. 3164.

a. The employee will address a written request for a waiver to the Administrator. The request will describe the specific matter involved, the nature and extent of the employee's participation therein, and the exact nature and amount of the financial interest relating to the specific matter.

b. The employee, if stationed at NASA Headquarters, will forward his request to the Administrator via the Official-in-Charge of the Headquarters Office in which the employee is located. The official will transmit the request with his comments and recommendations on the proposed waiver to the Administrator.

c. The employee, if stationed at a NASA field or component installation, will forward his request to the Administrator via the Head of the installation, who will transmit the request, with his comments and recommendations on the proposed waiver, to the Administrator.

d. The determination required by the statute will be made only by the Administrator or Deputy Administrator in the case of employees holding appointments under the statutes cited in paragraph 1 of this appendix.

2. All other employees—*a. Headquarters*.

(1) All other NASA employees (including civilian and military personnel of other Government agencies regularly detailed to NASA) who are stationed at NASA Headquarters will forward their requests for a waiver to the Official-in-Charge of the Headquarters Office in which the employee is located. The waiver request will contain the same information as required in paragraph 1a of this appendix. The official will transmit the request with his comments and recommendations on the proposed waiver to the Associate Administrator for Center Operations.

(2) The Associate Administrator for Center Operations is authorized to make the determination required by the Statute. This authority may not be redelegated.

b. *Field and component installations*. (1) All other NASA employees (including civilian and military personnel of other Government agencies regularly detailed to NASA) who are stationed at a field or component installation will forward their requests for a waiver to the head of the installation, via the head of the major organizational component in which the employee is located. The waiver request will contain the same information as required in paragraph 1a of this appendix. The head of the major organizational component will transmit the request to the head of the installation with his comments and recommendations on the proposed waiver.

(2) The heads of NASA field and component installations, and the deputy or associ-

ate heads of such installations, are authorized to make the determination required by the statute. This authority may not be delegated. An information copy of each such determination or of the disapproval of the employee's request will be forwarded to the Associate Administrator for Center Operations, NASA Headquarters.

[32 FR 14648, Oct. 21, 1967, as amended 41 FR 31526, July 29, 1976]

APPENDIX B—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITION OF 18 U.S.C. 208(a) (S. § 1207.735-403(b))

Pursuant to the authority contained in U.S.C. 108(b)(2), it has been determined that the categories of financial interests hereinafter described are, to the extent indicated, exempted from the application of the prohibition of 18 U.S.C. 208(a), because they are too remote or too inconsequential to affect the integrity of a NASA employee's services in any matter in which he may serve in his governmental capacity. Therefore, the provisions of 18 U.S.C. 208(a) do not preclude the participation by a NASA employee, including a special Government employee, in matters of a type covered by the prohibition of section 208(a) where the financial interest involved has been exempted hereunder.

1. The following exemptions apply to financial interests which are held directly by a NASA employee, including a special Government employee, or by his spouse or minor child, whether jointly or individually, or by a NASA employee and his partner or partners as joint assets of the partnership:

a. Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed \$5,000, and provided such stocks and securities are listed for trading on the New York or the American Stock Exchange. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities.

b. Ownership of bonds other than corporate bonds, regardless of the value of such interest. This exemption extends also to any financial interests that the organization whose bonds are so owned may have in other business entities.

c. Ownership of shares in a mutual fund or regulated investment company regardless of the value of such interest. This exemption extends also to any financial interests

that the mutual fund or investment company may have in other business entities.

2. If a NASA employee, including a special Government employee, or his spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraph 1a above for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be exempt to the same extent as provided under paragraph 1 b and c above for the direct ownership of such bonds or shares.

3. If a NASA employee, including a special Government employee, is an officer, director, trustee, or employee of an educational institution, or if he is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interests that the institution may have in the matter through its holdings of securities issued by business entities will be exempt, provided the NASA employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

4. If a NASA employee, including a special Government employee, has continued to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which he is a former employee, his financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan. This exemption extends also to any financial interests that the organization may have in other business activities.

APPENDIX C—PROCEDURES FOR FILING STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS (see § 1207.735-404)

1. *Time and place.* a. Each employee required to file a statement under Subpart D will obtain NASA Form 1270 from the local personnel office and after completing the form will submit it to the local personnel officer as follows:

(a) Thirty days after entrance on duty;

(b) Ten days after his position is specifically identified as one requiring the incumbent thereof to file a financial statement under § 1207.735-404(a)(4), or after the Civil Service Commission has approved the deter-

mination that he should file, under § 1207.735-404(a)(5).

(c) After selection and at least 5 days before service on the boards or committees listed in § 1207.735-404(a)(3).

2. Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement of interest held as of June 30 each year. If no changes or additions have occurred since the previous statement, a negative report to that effect is required. All supplementary statements, including negative reports, will be filed on NASA Form 1270.

3. *Financial interests of employee's relatives.* For purposes of this reporting requirement, the financial interests of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee and must be reported. "Members of an employee's immediate household" means those blood relations who are residents of the employee's household.

4. *Information not known by employees.* If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf. The employee concerned should avoid gaining knowledge about such interests in order to prevent the possibility of invoking 18 U.S.C. 208.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

Subpart E—Advisory Service and Enforcement

§ 1207.735-500 Scope of subpart.

This subpart (a) establishes an advisory service for employees for the purpose of furnishing interpretations and advising on questions arising under this part, and (b) prescribes the types of remedial and disciplinary actions which may be taken to enforce the requirements of Subparts A, B, C, D, and E of this part.

§ 1207.735-501 Use of advisory service.

When questions or problems arise concerning matters covered by this part NASA employees will seek the advice and consultative services of the counselors designated in § 1207.735-502.

§ 1207.735-502 Designation of counselors and statement of functions.

(a) The General Counsel is designated as the Agency Counselor. His functions consist of the following:

(1) Act as the principal point of contact with the Civil Service Commission on matters covered by this part; and

(2) Provide general guidance to Deputy Counselors for the purpose of achieving uniform interpretation of this part.

(b) Deputy Counselors. (1) The following officials are designated as Deputy Counselors under this subpart:

(i) NASA Headquarters—

(a) Assistant Administrator for Personnel Programs;

(b) Director of Personnel, NASA;

(c) Deputy General Counsel;

(d) An Assistant General Counsel, as designated by the Agency Counselor; and

(e) Director, Headquarters Office of Personnel.

(ii) NASA field and component installations—

(a) The Chief Counsel; and

(b) The Personnel Office.

(2) Functions of the Deputy Counselors;

(i) The Assistant Administrator for Personnel Program, NASA, will oversee the activities of the Deputy Counselors (Personnel) under the general guidance of the Agency Counselor.

(ii) Deputy Counselors (Legal) will be responsible for—

(a) Reviewing statements of employment and financial interests, filed pursuant to the provisions of Subpart D; and

(b) Advising the Deputy Counselors (Personnel) on questions regarding the interpretation and application of statutes, Executive Orders, Court Decisions, the decisions of the Comptroller General, and other legal matters arising under this part.

(iii) Deputy Counselors (Personnel) will be responsible for—

(a) Counseling employees on all other problems and questions arising under this part which are not specifically within the responsibility of the Deputy Counselors (Legal); and

(b) Consulting, as necessary, with the Deputy Counselors (Legal) on

questions and problems arising under this part.

(iv) Deputy Counselors may carry out their responsibilities through designated subordinates. The Deputy Counselors, however, shall retain ultimate responsibility for the functions assigned to them under this § 1207.735-502.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31527, July 29, 1976]

§ 1207.735-503 Review, enforcement, reporting, and investigating.

(a) Each statement, and supplementary statement, of employment and financial interests submitted under Subpart D shall be reviewed by the appropriate Deputy Counselor (Legal). If that review discloses a conflict of interest or apparent conflict of interest the employee shall be given an opportunity to explain the conflict or apparent conflict, and every effort shall be made to resolve the matter. If the matter cannot be resolved at a lower level, it shall be reported to the Agency Counselor. If the Agency Counselor decides that remedial action is necessary, he shall take such action immediately to end the conflict or apparent conflict of interest.

(b) NASA employees should consult with their Deputy Counselors with regard to any questions concerning this part. Resolution of problems disclosed by such consultations will be accomplished at the lowest possible supervisory level in the agency through counseling or by taking administrative action to eliminate real or apparent conflicts of interest. The services of the NASA Inspection Division will be requested by the Deputy Counselor when necessary, to conduct investigations to ascertain all relevant facts.

(c) Any NASA employee receiving an allegation of a possible violation of the provisions of this part by any other NASA employee (including civilian and military personnel of other Government agencies, regularly detailed to NASA) shall, unless it is based on mere gossip or rumor, promptly report it directly to the Director of Inspections or his local representative, as provided for in NASA Management Instruction 1960.1.

(d) A violation of the regulations contained in this part may be cause for appropriate disciplinary action. All disciplinary or remedial action taken hereunder will be in conformance with applicable laws, Executive Orders, Civil Service Commission regulations and NASA regulations. Appropriate disciplinary or remedial action includes, but is not limited to, divestiture by the employee of his conflicting interest, disqualification for particular assignments, reassignment, or disciplinary action.

(e) The employee concerned will have a reasonable opportunity during any investigation and at all levels of consideration of his problem to present in person and through documents his position on the matter.

Subpart F—Standards of Conduct for Special Government Employees

§ 1207.735-600 Scope of subpart.

This subpart:

(a) Provides guidance with respect to the application of the conflict of interests statutes to special Government employees (as defined in § 1207.735-601); it is of particular applicability to consultants and experts.

(b) Sets forth the standards of ethical conduct which, under Presidential order and regulations of the Civil Service Commission, special Government employees are expected to observe.

§ 1207.735-601 Definitions.

(a) *Special Government employee.* A special Government employee is defined, under 18 U.S.C. 202, and for the purposes of this subpart, as an officer or employee who is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties, either on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days (see § 1207.735-602).

(b) *Particular matter.* The term "particular matter" is not defined in the statutes, but is used in context as follows:

"* * * any proceeding, application, request for a ruling or other determination, contract, claim, controversy,

charge, accusation, arrest or other particular matter."

(c) *Personally and substantially.* The term "personally and substantially" is not defined in the statutes, but is used in context as follows: "* * * personally and substantially, * * * through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise * * *".

(d) *Official responsibility.* The term "official responsibility" is defined by statute to mean the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." NASA consultants or experts will not normally exercise official responsibility in connection with any matters.

§ 1207.735-602 Applicability.

(a) This subject is applicable to all NASA employees who are classified as special Government employees. It is of particular applicability to NASA consultants and experts, who normally fall within the definition of the term "special Government employee."

(b) To the extent that the conflict of interests statutes apply to a special Government employee, they apply to his activities on all days during the period of his NASA appointment, beginning with the date on which he takes an oath of office as a Government employee, whether he works on a full-time or intermittent basis. Similarly, the ethical standards prescribed in this subpart apply to the special Government employee during the full period of his appointment as a NASA employee, and not merely on the days on which he performs services as an employee.

(c) NASA employees, including consultants and experts, who are appointed to serve for more than 130 days during a period of 365 consecutive days are not subject to this subpart, even though they may in fact work 130 days or less, but are subject to Subparts A through E, prescribing standards of conduct for regular Government employees.

§ 1207.735-603 Application of conflict of interest statutes.

The so-called "conflict-of-interests" statutes (18 U.S.C. 203, 205, 207, 208, and 209) are criminal statutes which provide for fines or imprisonment if they are violated. Their full text is set forth in Appendix A to this subpart. In summary, they apply to the special Government employee as follows:

(a) 18 U.S.C. 203 and 205 apply to the special Government employee in his capacity as a private individual while serving also as a Government employee. They provide that the special Government employee may not, except in the discharge of his Government duties:

(1) Represent anyone else before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b)) involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and in which he has at any time participated "personally and substantially" (§ 1207.601(c)) either as a special or regular Government employee.

(2) Represent anyone else before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b)) involving a specific party or parties which is pending within NASA, if he has served as a NASA employee for more than 60 days during the preceding 365 days. The special Government employee is bound by this restraint whether or not he has acted "personally and substantially" (§ 1207.735-601(c)) in relation to the "particular matter."

There are four exceptions from the application of one or both of the foregoing prohibitions, which are specified in the full text of section 205 (Appendix A of this subpart).

(b) 18 U.S.C. 207 applies to the special Government employee in his capacity as a private individual, after he has terminated his service as a Government employee. It provides that the former employee may not:

(1) At any time after his Government employment has ended, represent anyone else before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b))

involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated "personally and substantially" (§ 1207.735-601(c)), either as a special or regular Government employee.

(2) Within 1 year after his Government employment has ended, appear personally before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b)) involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which was under his "official responsibility" (§ 1207.735-601(d)) as a Government employee within a period of 1 year prior to the termination of such responsibility. The prohibition applies whether or not the special Government employee participated "personally and substantially" (§ 1207.735-601(c)) in the "particular matter" (§ 1207.735-601(b)) while he was employed.

(c) 18 U.S.C. 207(c) applies to the partner of a special Government employee. It provides that during the period of the special Government employee's appointment, his partner may not act as agent or attorney for anyone else in relation to a "particular matter" (§ 1207.735-601(b)) in which the United States is a party or has a direct and substantial interest and in which the employee is participating or or has participated "personally and substantially" (§ 1207.735-601(c)) as a special Government employee, or which is under the employee's "official responsibility" (§ 1207.735-601(d)).

(d)(1) 18 U.S.C. 208 applies to the special Government employee when he is acting in his capacity as a Government employee. It provides that the special Government employee may not, in his governmental capacity, participate "personally and substantially" (§ 1207.735-601(c)) in any "particular matter" (§ 1207.735-601(b)) in relation to which matter, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospec-

tive employment, has a financial interest.

(2) The statute also provides for two types of exemptions to be granted from the foregoing prohibition, so as to permit a special Government employee to participate "personally and substantially" (§ 1207.735-601(c)) in a "particular matter" (§ 1207.735-601(b)), notwithstanding the existence of a conflicting financial interest which he holds directly or that is imputed to him. These exemptions are:

(i) In connection with specific matters, if the special Government employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him, an ad hoc exemption from the application of the statutory prohibition may be granted, in advance of his acting in relation to that matter, by the NASA official responsible for his appointment as a special Government employee.

(ii) A general exemption, applicable to all NASA employees including special Government employees, of certain financial interest which have been determined to be too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may be called upon to participate, may also be granted. The categories of financial interests which have been exempted by the Administrator under this general authority are set forth in Appendix B to this subpart.

(e) 18 U.S.C. 209, the fifth "conflict-of-interests" statute, does not apply to special Government employees.

§ 1207.735-604 Other statutes.

(a) There are many other criminal statutes which are especially aimed at regulating the conduct of Government employees, and which therefore apply to special Government employees. Two such statutes which are closely related to the conflict-of-interests statutes are:

(1) *Bribery*. 18 U.S.C. 201 prohibits a Government employee from soliciting, receiving or agreeing to receive, directly or indirectly, anything of value for himself or others in connection with the performance of his official duties,

or in return for committing or aiding in the commission of a fraud on the United States.

(2) *Disclosure of private or proprietary information*. 18 U.S.C. 1905 prohibits a Government employee from disclosing, in any manner and to any extent not authorized by law, any information coming to him in the course of his employment or official duties which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, business entity, or association.

(b) Regulations of the Civil Service Commission require that certain other statutes pertaining to the ethical and other conduct of special Government employees be brought to the attention of all such employees. These are listed in Appendix C to this subpart.

§ 1207.735-605 Standards of ethical conduct.

Under Presidential order and regulations of the Civil Service Commission, certain additional standards of ethical conduct have been prescribed for all Government employees. Among these the following are applicable to special Government employees:

(a) *Use of Government employment*. A special Government employee may not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) *Use of inside information*. A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part, or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business or financial ties. In this context, "inside information" means information obtained as a result of his Government employment which has not been made available to the general public or would not be

made available on request. However, nonpublic information may be used upon a written determination made by the Administrator that such use would be in the public interest.

(c) *Avoidance of actions which may appear coercive*. A special Government employee should not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(d) *Acceptance of gifts, entertainment or favors*. (1) Except as provided in paragraph (d)(2) of this section, a special Government employee should not solicit or receive from a person, organization or group having business with NASA, any gift, gratuity, entertainment (including meals), favors, loan, or other things of monetary value, for himself or for another person, particularly one with whom he has family, business, or financial ties. This rule does not apply if the special Government employee is unaware of such business.

(2) The following are exceptions to the general rule set forth in paragraph (d)(1) of this section:

(i) Receipt of salary, bonuses, or other compensation or emoluments from his non-Government employer or employers.

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting.

(iii) Acceptance of modest entertainment, such as a meal or refreshments, in connection with attendance at widely attended gatherings sponsored by industrial, technical, or professional organizations; or in connection with attendance at public ceremonies or similar activities financed by nongovernmental sources where the special Government employee's participation on behalf of NASA is the result of an invitation addressed to him in his official capacity and approved as a part of his official duties, and the entertainment accepted is related to, and in keeping with, his official participation.

(iv) Acceptance of gifts, favors or entertainment, where there is an obvious family or personal relationship be-

tween the employee, or between his spouse, children or parents, and the donor, and where the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the gift, favor, or entertainment.

(v) Acceptance of loans from banks or other financial institutions on customary terms, to finance proper and usual activities of employees, such as home mortgage loans.

(vi) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value.

(vii) Acceptance of incidental transportation in kind from a private organization, when it is furnished in connection with the performance of the special Government employee's official duties, and provided it is of a type customarily provided by the private organization.

(e) A special Government employee is not authorized to accept a gift, decoration, or other thing from a foreign government, unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342 (see NASA Management Instruction 1030.1A).

§ 1207.735-606 Statement of employment and financial interests.

(a) Under Presidential order and regulations of the Civil Service Commission, each special Government employee is required to submit a statement of his employment and financial interests at the time of his initial appointment, except to the extent that such requirement has been waived by the Administrator, as specified in paragraph (g) of this section.

(b) The purpose of the statement of employment and financial interests is to assist the employee, and those who review his statement, in avoiding situations where a conflicting financial interest might exist. The statement will be treated by NASA as private information of the employee, and will be held in confidence. It will be reviewed only by those NASA employees who have been designated by the Administrator to make such a review, and there will be no discussion or disclo-

sure of the details of the information furnished except as necessary to carry out the provisions of this subpart. Information contained in the statement shall not be disclosed outside NASA except as authorized by the Administrator or the Civil Service Commission for good cause shown.

(c) The submission of a statement of employment and financial interests is not intended to relieve the employee from complying with other applicable provisions of law, Executive order, or this subpart. In particular, the employee is not thereby permitted to participate in a matter where such participation is prohibited by 18 U.S.C. 208 (see § 1207.735-603(d)).

(d) The statement of employment and financial interests will be submitted at the time the special Government employee is initially appointed by NASA; a new statement will be submitted each time he is reappointed as a NASA special Government employee. The statement will be kept current throughout the period of the employee's service as a NASA special Government employee by the submission of supplementary statements on NASA Form 1271.

(e) The statement of employment and financial interests will be filed on NASA Form 1271 which describes the information to be furnished. The special Government employee is not required to submit any information relating to his connection with, or interest in, a professional society, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. In this connection, however, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises." Information relating to such institutions, where relevant, should therefore be included in a special Government employee's statement of employment and financial interests.

(f) Information concerning financial interests which have been exempted from the prohibition of 18 U.S.C. 208(a), as set forth in Appendix B to this subpart, may be omitted from the

statement of employment and financial interest.

(g) The Administrator of NASA has determined that the following categories of special Government employees who are not consultants or experts as defined in Chapter 304 of the Federal Personnel Manual will not be required to file statements of employment and financial interests because their duties are of a nature and at such a level of responsibility that the submission of a statement by them is not necessary to protect the integrity of the Government:

(1) Temporary and summer employees below the grade of GS-13.

(2) Employees participating in a management intern or other training program.

§ 1207.735-607 Advisory service.

Special Government employees who desire assistance or advice on interpreting the provisions of this subpart, or on other matters relating to the subject matter covered herein, are invited to consult the Agency Counselor (the NASA General Counsel) at Washington, D.C., or a Deputy Counselor (Legal) at a NASA field installation, or a Deputy Counselor (Personnel) (personnel officer at Headquarters or the field installation).

§ 1207.735-608 Review, enforcement, reporting, and investigation.

(a) Each statement of employment and financial interests submitted under this subpart shall be reviewed by the appropriate Deputy Counselor (Legal). If his review discloses a conflict of interests or apparent conflict of interests the employee shall be given an opportunity to explain the conflict or apparent conflict, and every effort shall be made to resolve the matter. If the matter cannot be resolved at a lower level, it shall be reported to the Agency Counselor. If the Agency Counselor decides that remedial action is necessary, he shall take such action immediately to end the conflict or apparent conflict of interests.

(b) Special Government employees should consult with a Deputy Counselor with regard to any questions con-

cerning this subpart. Resolution of problems disclosed by such consultations will be accomplished at the lowest possible supervisory level in the agency through counseling or by taking administrative action to eliminate a real or apparent conflict of interests. The services of the NASA Inspections Division will be requested by the Deputy Counselor, when necessary, to conduct investigations to ascertain all relevant facts.

(c) A violation of the regulations contained in this subpart may be cause for appropriate disciplinary action. All disciplinary or remedial action taken hereunder will be in conformance with applicable laws, Executive orders, Civil Service Commission regulations and NASA regulations. Appropriate disciplinary or remedial action includes, but is not limited to, divestiture by the employee of his conflicting interest, disqualification for particular assignments, reassignment, or disciplinary action.

(d) The special Government employee concerned will have a reasonable opportunity during any investigation and at all levels of consideration of his problem to present in person and through documents his position on the matter.

APPENDIX A—CONFLICT OF INTERESTS STATUTES (see § 1207.735-603)

18 U.S.C. 203. Compensation to Members of Congress, officers, and others in matters affecting the Government. (a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia—in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any depart-

ment, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

18 U.S.C. 205. Activities of officers and employees in claims against and other matters affecting the Government. Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) Acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) Acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and sub-

stantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States: *Provided*, That the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the **FEDERAL REGISTER**.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

18 U.S.C. 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees.

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any

oral or written communication on behalf of any other person (except the United States) to—

(1) Any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) In which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) Any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and

(3) As to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government Employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section within one year after

such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) The department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) In connection with any judicial, rule-making, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy investigation, charge, accusation, arrest, or other particular matter, and

(3) Which is pending before such department or agency or in which such department or agency has a direct and substantial interest—shall be fined not more than \$10,000, or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) At a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) On active duty as a commissioned officer of a uniformed service assigned to pay grade of O-9 or above as described in section 201 of title 37, United States Code; or

(C) In a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Di-

rector of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) An elected official of a State or local government, or

(B) Whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the **FEDERAL REGISTER**, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any inde-

pendent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of

the Office of Government Ethics, establish procedures to carry out this subsection.

18 U.S.C. 208. Acts affecting a personal financial interest. (a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than \$10,000, or imprisoned not more than 2 years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officers or employee, or (2) if, by general rule or regulation published in the FEDERAL REGISTER, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

[32 FR 14648, Oct. 21, 1967, as amended at 50 FR 3888, Jan. 29, 1985]

APPENDIX B—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITION OF 18 U.S.C. 208(a) (see § 1207.735-603(d)(2)(ii))

Pursuant to the authority contained in 18 U.S.C. 208(b)(2), it has been determined that the categories of financial interests hereinafter described are, to the extent indicated, exempted from the application of the prohibition of U.S.C. 208(a), because they are too remote or too inconsequential to affect the integrity of a NASA employee's

services in any matter in which he may act in his governmental capacity. Therefore, the provisions of 18 U.S.C. 208(a) do not preclude the participation by a NASA employee, including a special Government employee, in matters of a type covered by the prohibition of section 208(a) where the financial interest involved has been exempted hereunder.

1. The following exemptions apply to financial interests which are held directly by a NASA employee, including a special Government employee, or by his spouse or minor child, whether jointly or individually, or by a NASA employee and his partner or partners as joint assets of the partnership:

a. Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed \$5,000, and provided such stocks and securities are listed for trading on the New York or the American Stock Exchange. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities.

b. Ownership of bonds other than corporate bonds, regardless of the value of such interest. This exemption extends also to any financial interests that the organization whose bonds are so owned may have in other business entities.

c. Ownership of shares of a mutual fund or regulated investment company regardless of the value of such interest. This exemption extends also to any financial interests that the mutual fund or investment company may have in other business entities.

2. If a NASA employee, including a special Government employee, or his spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraph 1a above or the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be exempt to the same extent as provided under paragraph 1b and c above for the direct ownership of such bonds or shares.

3. If a NASA employee, including a special Government employee, is an officer, director, trustee, or employee of an educational institution, or if he is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interests that the institution may have in the matter through its hold-

ings of securities issued by business entities will be exempt, provided the NASA employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

4. If a NASA employee, including a special Government employee, has continued to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which he is a former employee, his financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan. The exemption extends also to any financial interests that the organization may have in other business entities.

APPENDIX C—MISCELLANEOUS STATUTORY PROVISIONS (see § 1207.735-604)

1. House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service".

2. Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflict of interests, as appropriate to the employee concerned.

3. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

4. The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

5. The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

6. The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of private or proprietary information (18 U.S.C. 1905).

7. The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

8. The prohibition against the misuse of a Government motor vehicle or aircraft (31 U.S.C. 638a(c)).

9. The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

10. The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

11. The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

12. The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

13. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

14. The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public

money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

15. The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

16. The prohibitions against proscribed political activities ("The Hatch Act"—5 U.S.C. 7324-7327; 18 U.S.C. 602, 603, 607, and 608).

17. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart G—Administrative Enforcement Procedures for Alleged Violations of 18 U.S.C. 207

AUTHORITY: 18 U.S.C. 207; 5 CFR 737.27.

SOURCE: 45 FR 5298, Jan. 23, 1980, unless otherwise noted.

§ 1207.735-700 Scope of subpart.

This subpart establishes NASA's administrative enforcement procedures for handling allegations of violations of 18 U.S.C. 207, the Federal criminal prohibition against post employment conflicts of interest by former Government employees. It implements 18 U.S.C. 207(j) which requires each agency to establish such procedures, and the guidelines of the Office of Government Ethics (OGE) which appear at 5 CFR 737.27 (44 FR 19987-88; Apr. 3, 1979).

§ 1207.735-701 Policy.

Any allegation that a former NASA employee has violated 18 U.S.C. 207 will be thoroughly and impartially investigated following the guidelines of the OGE and the procedural requirements of this subpart before a final agency decision is reached.

§ 1207.735-702 Procedures for administrative disciplinary hearing.

(a) *Allegations of violations.* Any allegation that a former NASA employee has violated 18 U.S.C. 207 in connection with duties performed while the individual worked for NASA shall be referred to the NASA Inspector General for investigation. The Inspector General shall coordinate, as appropriate, with the Director of the OGE

and the Criminal Division of the Department of Justice.

(b) *Initiation of hearing.* When the NASA Inspector General determines after appropriate review that there is reasonable cause to believe that a former NASA employee has violated 18 U.S.C. 207 (a), (b), or (c), or any implementing regulations, the Inspector General shall prepare and issue the notice to the former employee required by 5 CFR 737.27(a)(3).

(c) *Appointment of examiner.* The Associate Deputy Administrator shall appoint an examiner upon issuance of a notice under paragraph (b) of this section. Any duly appointed examiner is hereby delegated authority to conduct an administrative hearing and to make an initial decision under the procedures of this subpart. The examiner shall be impartial and shall not have participated in any manner in the circumstances giving rise to the proceedings or the decision to initiate the proceedings. The examiner shall have a degree in law, be admitted to the bar, and be experienced in the conduct of administrative hearings.

(d) *Time, date and place of hearing.* Upon a request for a hearing by the former employee, the examiner shall schedule a hearing as promptly as possible, with due regard for the former employee's need for adequate time to prepare a defense and expeditious resolution of potentially damaging allegations. The examiner shall observe the procedural requirements of 5 CFR 737.27 and this subpart in conducting the hearing.

(e) *Rights of the former employee.* In connection with a hearing, the former employee shall have the right:

- (1) To represent oneself or to be represented by counsel;
- (2) To introduce and examine witnesses and to submit evidence;
- (3) To confront and cross-examine witnesses;
- (4) To present argument;
- (5) To request a transcript or recording of the proceedings.

(f) *Burden of proof.* The agency shall have the burden of proof and must establish by substantial evidence that a violation has occurred.

(g) *Initial decision.* (1) The examiner shall make an initial determination

based exclusively on matters of record in the proceeding.

(2) When a former employee does not elect a hearing, the examiner shall consider all available evidence, including any documentary evidence submitted by the former employee, together with any written argument submitted by the parties, and shall issue an initial decision based thereon.

(3) The written initial decision shall set forth all findings of fact and conclusions of law relevant to the matter at issue.

§ 1207.735-703 Appeal from initial decision.

Within 30 days after the date of the initial decision, either party may appeal the initial decision to the Associate Deputy Administrator. The Associate Deputy Administrator will review the pertinent record of the proceedings and any written arguments submitted by the parties concerning the appeal. If the Associate Deputy Administrator modifies or reverses the initial decision, he or she shall specify the findings of fact and conclusions of law that are different than those of the examiner.

§ 1207.735-704 Administrative sanctions.

(a) The final agency decision shall be (1) the decision of the Associate Deputy Administrator on an appeal under § 1207.735-703, or (2) the decision of the examiner which shall become final if no appeal is taken within the 30 day time limit.

(b) If the final decision of the agency is that a violation of 18 U.S.C. 207 (a), (b), or (c), or of implementing regulations has occurred, the following sanctions may be ordered by the Administrator against the former employee:

- (1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, NASA on any matter of business for a period not to exceed five years, which may be accomplished by directing NASA employees to refuse to participate in any such appearance or to accept any such communication; or

(2) Taking other appropriate disciplinary action.

(c) Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or implementing regulations under the procedures of this subpart may seek judicial review of the administrative determination and shall be notified of the opportunity for such review in the final decision of the agency.

Subpart H—Post Employment Regulations

AUTHORITY: 18 U.S.C. 207; 5 CFR Part 737.
SOURCE: 46 FR 51381, Oct. 20, 1981, unless otherwise noted.

§ 1207.735-800 Scope of subpart.

This subpart provides guidance to former NASA government employees who are subject to the restrictions of Title V of the Ethics in Government Act of 1978, as amended, and who want to communicate scientific and technical information to NASA.

§ 1207.735-801 Exemption for scientific and technological communications.

(a) Whenever a former government employee who is subject to the constraints of post employment conflicts of interest, 18 U.S.C. 207, wishes to communicate with NASA under the exemption in section 207(f) for the making of a communication solely for the purpose of furnishing scientific and technological information, he or she shall state to the NASA employee contacted, the following information:

- (1) That he or she is a former government employee subject to the post employment restrictions of 18 U.S.C. section 207 (a), (b), or (c)—specify which;
- (2) That he or she worked on certain NASA programs—enumerate which and

(3) That the communication is solely for the purpose of furnishing scientific or technological information.

(b) If the former government employee has questions as to whether the communication comes within the scientific and technological exemption he or she should contact the General

Counsel, the designated agency ethics official.

PART 1209—BOARDS AND COMMITTEES

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Subpart 1—Board of Contract Appeals

AUTHORITY: Sec. 203, 72 Stat. 429, 42 U.S.C. 2473, unless otherwise noted.

SOURCE: 45 FR 1006, Jan. 4, 1980, unless otherwise noted.

§ 1209.100 Scope.

This subpart establishes the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978 (Public Law 95-563) and prescribes its authority, duties, and membership.

§ 1209.101 Establishment.

The NASA Board of Contract Appeals was established by NASA Management Manual Instruction 2-4-1, June 25, 1959, and was subsequently continued in effect by NASA Management Instruction 1152.1A, April 1, 1968, NASA Management Instruction 1152.1B, October 28, 1970, and NASA

Management Instruction 1152.1C, April 24, 1974. The Board is continued in effect by this subpart.

§ 1209.102 Authority and duties of the Board.

(a) The Board, located at NASA Headquarters, Washington, D.C., shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relating to a contract made by NASA and (2) relating to a contract made by any other agency when such agency or the Administrator for Federal Procurement Policy has designated the NASA Board to decide the appeal. In exercising this jurisdiction, the Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims.

(b) The Board shall continue to act for and exercise the full authority of the Administrator in hearing and deciding all appeals in which, by the terms of a contract executed prior to March 1, 1979, the contractor may appeal to the Administrator from decisions of the contracting officer.

(c) There shall be no administrative appeal from decisions rendered by the Board. Either party to the dispute may appeal a decision of the Board under paragraph (a) of this section to the Court of Claims, as provided in section 10 of the Contract Disputes Act.

(d) The Board shall have all customary powers necessary for the performance of its duties including, but not limited to, the authority to issue rules of procedure, to conduct hearings, dismiss appeals or other proceedings, call witnesses, order the production of documents or other evidence, take official notice of facts within general knowledge, and decide all questions of fact or law raised by the appeal.

(e) A member of the Board may administer oaths to witnesses; authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal.

(f) The member of members of the Board assigned to hear an appeal shall

have authority to conduct prehearing conferences, hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument to a designated panel of the Board. A single member of a panel may be assigned to hear and decide motions which are not dispositive of the appeal.

(g) An appeal shall normally be adjudicated by a panel of two or more members. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal.

§ 1209.103 Membership.

(a) The Board shall consist of at least three members appointed by the Administrator, one of whom shall be designated as Chairperson. A Vice-Chairperson may also be designated from the appointed members. Members may perform other duties, not inconsistent with their primary duty, as assigned by the Administrator. The Board is responsible directly to the Administrator.

(b) Members of the Board are hereby designated Administrative Judges.

(c) Members must be qualified in accordance with the provisions of section 8(b)(1) of the Contract Disputes Act of 1978.

(d) Additional members, qualified in accordance with paragraph (c) of this section, and currently serving on other agency boards, may be designated by the Administrator to serve on the Board on an ad hoc basis for the adjudication of particular appeals.

(e) No member of the Board shall consider an appeal if the member has participated in any aspect of the award or administration of a contract in dispute.

§ 1209.104 Responsibilities of the chairperson.

The Chairperson of the Board of Contract Appeals shall be responsible for:

- (a) The administration of the Board;
(b) The assignment of a member or members of the Board to act for the Board in each appeal and the assignment of the panel of Board members to decide each appeal;

(c) The receipt and custody of all papers and material relating to contract appeals; and

(d) The designation of an acting Chairperson during the Chairperson's absence, disqualification, or disability who is empowered to exercise the powers of the Chairperson, provided a Vice-Chairperson has not been formally designated;

(e) The submission of a report, not less often than annually, to the Administrator on the status of the Board's activities.

Subpart 2—[Reserved]

Subpart 3—Contract Adjustment Board

AUTHORITY: Pub. L. 85-804 and 42 U.S.C. 2473(c)(1).

SOURCE: 43 FR 50674, Oct. 31, 1978, unless otherwise noted.

§ 1209.300 Scope.

This subpart continues in effect the Contract Adjustment Board (hereinafter referred to as "the Board") to consider and dispose of requests for extraordinary contractual adjustments by contractors of the National Aeronautics and Space Administration (hereinafter referred to as NASA).

§ 1209.301 Authority.

(a) The Act of August 28, 1958 (50 U.S.C. 1431-35), (hereinafter referred to as "the Act") empowers the President to authorize departments and agencies exercising functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts, and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the President deems that such action would facilitate the national defense.

(b) Executive Order No. 10789, dated November 14, 1958 (23 FR 8897), authorizes the Administrator, NASA, to exercise the authority conferred by the Act and to prescribe regulations for the carrying out of such authority

b. Rates and conditions. For travel on official business beyond the limits of the conterminous United States by airplane, train, or boat (regardless of whether commercially or Government-owned), whether en route between the conterminous United States and a locality beyond or between such localities, including stopovers of less than 6 hours, the maximum per diem that may be authorized or approved (except for the provision in 1-7.6d(1)) is as follows:

(1) Same day return. When the traveler departs from a duty point in the conterminous United States or in a locality beyond the limits of the conterminous United States and returns during the same calendar day to a duty point within the conterminous United States or the locality, respectively, the maximum per diem rate allowable for the trip shall be that of the duty point at which the trip began.

(2) En route less than 6 hours. For trips other than those described in (1), above, the maximum per diem rate allowable between duty points shall be that of the destination duty point when the travel time between a duty point in the conterminous United States and a duty point in a locality beyond the limits of the conterminous United States or between a duty point in one such locality and a duty point in another is less than 6 hours.

(3) En route 6 hours or more. When, in instances described in (2) above, the travel time between the duty points is 6 hours or more, the per diem rate applicable outside the conterminous United States is \$6, provided that:

(a) For boat travel of more than 9 successive days, in addition to the fractional days of embarkation and debarkation, the per diem rate for the succeeding calendar days and for the fractional day of debarkation is \$2; and

(b) When either of such rates prescribed herein is not commensurate with a traveler's subsistence expenses, a different rate may be authorized or approved not in excess of the maximum rate applicable to the destination duty point or, with respect to boat travel, not in excess of \$9 except that the rate for travel by the Alaska Ferry System shall not exceed \$23.

c. Travel beginning or ending in the United States. When travel covered by 1-7.4 begins or ends at a place in the conterminous United States, the maximum per diem rate allowable for the portion of the travel between such place and the place of entry or exit in the conterminous United States shall be the maximum per diem rate applicable within the conterminous United States.

d. When lodging is not located at duty point. When suitable lodging is not available at place of temporary duty in a locality beyond the limits of the conterminous United States and the employee is required to obtain lodging at a place in a different locality, the maximum applicable per diem rate shall be that of the locality in which the lodging is obtained.

(3) An agency may determine that the lodgings-plus method as prescribed herein is not appropriate in circumstances such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established and reductions made in accordance with this part, provided the exception from the lodgings-plus method is authorized in writing by an appropriate official of the agency involved.

d. Extended stays. For travel assignments involving duty for extended periods at temporary duty stations where travelers are able to secure lodging and meals at lower costs, the per diem rate shall be adjusted downward.

e. Meetings and conventions. In the interest of uniform treatment of employees, whenever a meeting or conference is arranged which will involve the travel of attendees from other agencies or components of the same agency, the agency or agencies sponsoring the meeting or conference shall recommend to the other participating agencies or components a per diem allowance that would be reasonable in view of the circumstances of the particular meeting or conference.

f. Subsistence payments for extended training assignments.

(1) The Government Employees Training Act (5 U.S.C. 4101-4118), authorizes agencies to pay all or a part of the subsistence expenses of an employee assigned to training at a temporary duty station. Implementing regulations prescribed by the Office of Personnel Management (OPM) in part 410-603 of Title 5, Code of Federal Regulations (5 CFR 410-603) provide specific guidelines for the payment of subsistence expenses for employees on extended training assignments (more than 30 calendar days) at temporary duty stations.

(2) Generally, the OPM guidelines require a reduced subsistence payment of not more than 55 percent of the per diem rate (see 1-7), or if the training facility is in a high rate geographical area (HRGA), not more than 55 percent of the prescribed maximum daily rate for the HRGA. Subsistence payments above these levels must be justified. However, these subsistence payments shall not in any case exceed the ceilings imposed by 5 U.S.C. 5702. Agencies shall refer to the OPM guidelines in 5 CFR 410-603 (published in 46 FR 40671 - 40672) for specific criteria to determine the appropriate subsistence payments. Guidelines are also published by OPM in the Federal Personnel Manual, Chapter 410, Section 6-3.

1-7.4. Rates en route outside conterminous United States.

a. Duty point. As used in 1-7.4 the term "duty point" means the official station outside the conterminous United States, any other place outside the conterminous United States at which official travel begins or ends, or the point of exit or entry in the conterminous United States.

1-7.3. Agency responsibility for authorizing individual rates.

a. General. It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Care should be exercised to prevent fixing per diem rates in excess of those required to meet the necessary authorized subsistence expenses. To this end, consideration should be given to factors which reduce the expenses of the employee such as: Known arrangements at temporary duty locations where lodging and meals may be obtained without cost or at prices advantageous to the traveler; established cost experience in the localities where lodging and meals are required; situations where special rates for accommodations have been made available for a particular meeting or conference; the extent to which the traveler is familiar with establishments providing lodging and meals at a lower cost in certain localities, particularly where repeated travel is involved; and the use of methods of travel where sleeping accommodations are provided as part of the transportation expenses. The specific rules contained in b through e, below, shall be applied in the situations covered.

b. When lodgings are not required. For travel of less than 24 hours when a night's lodging is not required, the per diem rate shall be adjusted downward to reflect the fact that the traveler does not incur costs for lodging.

c. When lodgings are required.

(1) For travel in the conterminous United States when lodging away from the official duty station is required, the per diem rate shall be established on the basis of the average amount the traveler pays for lodging, plus an allowance of \$23 for meals and miscellaneous subsistence expenses. Calculation shall be as follows:

(a) To determine the average cost of lodging, divide the total amount paid for lodgings during the period covered by the voucher by the number of nights for which lodgings were or would have been required while away from the official station. Exclude from this computation the night of the employee's return to his/her residence or official station.

(b) To the average cost of lodging add the allowance for meals and miscellaneous expenses. The resulting amount rounded to the next whole dollar, subject to the maximum prescribed in 1-7.2a, is the rate to be applied to the traveler's reimbursement voucher.

(2) No minimum allowance is authorized for lodging since those allowances are based on actual lodging costs. Receipts for lodging costs may be required at the discretion of each agency; however, employees are required to certify on their vouchers that per diem claimed is based on the average cost for lodging while on official travel within the conterminous United States during the period covered by the voucher.

PART 7. PER DIEM INSTEAD OF ACTUAL SUBSISTENCE

1-7.1. Coverage.

a. Travel for which per diem shall be paid. Per diem allowances under 1-7 shall be paid for official travel except when it is determined that reimbursement should be on the basis of actual subsistence expenses as provided in 1-8.

b. Expenses covered by per diem. The per diem instead of subsistence expenses includes all charges for meals, lodging, personal use of room during daytime, baths, all fees and tips to waiters, porters, baggagemen, bellboys, hotel maids, dining room stewards and others on vessels, hotel servants in foreign countries, telegrams and telephone calls reserving hotel accommodations, laundry, cleaning and pressing of clothing, fans and fires in rooms, and transportation between places of lodging or business and places where meals are taken except as otherwise provided in 1-2.3b. The term "lodging" does not include accommodations on airplanes, trains, or steamers, and these expenses are not subsistence expenses. However, availability of such accommodations shall be considered in connection with the establishment of per diem payment rules and the fixing of per diem rates.

Note.—Par. 1-7.1a amended, FPMR Temp. Reg. A-11, May 19, 1975.

1-7.2. Maximum locality rates. A per diem allowance instead of actual subsistence expenses for travel on official business shall be authorized or approved within the following maximum rates:

a. Conterminous United States. Reimbursement for official travel within the conterminous United States shall be a daily rate not in excess of \$50 except when actual subsistence expense travel is authorized or approved due to the unusual circumstances of the travel assignment or for travel to a designated high rate geographical area as provided in 1-8.1.

b. United States other than conterminous. For travel in localities in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States, at a rate not in excess of the rate prescribed by the Secretary of Defense and listed in Civilian Personnel Per Diem Bulletins published in the Federal Register.

c. Foreign areas. For travel in localities in any area (including the Trust Territory of the Pacific Islands) situated outside the United States, the Commonwealth of Puerto Rico, and the possessions of the United States, at a rate not in excess of the rate prescribed by the Secretary of State and published in the Standardized Regulations (Government Civilians, Foreign Areas).

Note.—Pars. 1-7.2 and 1-7.2a amended, FPMR Temp. Reg. A-11, May 19, 1975; Par. 1-7.2a amended, FPMR Temp. Reg. A-11, Supp. 3, Sept. 28, 1976; and Par. 1-7.2a amended, FPMR Temp. Reg. A-11, Supp. 11, Sept. 26, 1980.

PART 8. REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

1-8.1. Authorization or approval.

a. General. Authority for reimbursement of actual and necessary subsistence expenses incurred during official travel is normally contingent upon the entitlement to per diem (see 1-7) and the determination that the authorized maximum per diem allowances would be inadequate to cover the actual and necessary expenses of the traveler. A traveler may be reimbursed for the actual and necessary expenses of the official travel when the maximum per diem allowance otherwise allowable is determined to be inadequate due to the unusual circumstances of the travel assignment, or for travel to high rate geographical areas. Heads of those agencies defined in 5 U.S.C. 5701, or their designees (see 1-8.3), shall authorize or approve reimbursement for the actual and necessary subsistence expenses of a traveler incurred during official travel in accordance with the provisions of this part.

b. Travel to high rate geographical areas (HRGA's). Actual subsistence expense reimbursement shall normally be authorized or approved whenever temporary duty travel is performed to or in a location designated as a high rate geographical area (see 1-8.6), except when the high rate geographical area is only an en route or intermediate stopover point at which no official duty is performed. Agencies may, however, authorize other appropriate and necessary reimbursement as follows:

(1) A per diem allowance under 1-7.3 if the factors cited in 1-7.3a would reduce the travel expenses of an employee provided the agency official designated under 1-8.3a(1) determines the existence of such factors in a particular travel assignment and authorizes an appropriate per diem rate; or

(2) Actual subsistence expense reimbursement under paragraph c, below, and 1-8.2a(2) if the travel to a high rate geographical area also involves unusual circumstances of the travel assignment.

c. Unusual circumstances of the travel assignment. Actual subsistence expense reimbursement may be authorized or approved for specific travel assignments within and outside the conterminous United States when it is determined that the maximum per diem allowance (see 1-7.2) would be inadequate due to the unusual circumstances of the travel assignment.

(1) The actual subsistence expense basis of reimbursement shall not be authorized or approved in instances in which the actual and necessary subsistence expenses exceed the maximum per diem allowable only by a small amount. The actual subsistence expense basis may appropriately be authorized or approved for travel assignments which otherwise meet conditions prescribed herein and by the head of the agency if, due to unusual circumstances:

(a) The actual and necessary subsistence expenses exceed the maximum per diem allowance (see 1-7.2) by 10 percent or more; or

(b) The traveler has no alternative but to incur hotel costs which absorb all or nearly all of the maximum per diem allowance (see 1-7.2), since hotel accommodations constitute the major portion of necessary subsistence expenses.

(2) Notwithstanding the criteria outlined above, agencies shall not use the actual expense under unusual circumstances authority as blanket authority to authorize or approve automatic actual expense reimbursement for all travel to an area where the reimbursement rate is inadequate. This authority shall be used only on an individual case basis with appropriate consideration in each case of the actual facts existing at the time the travel is directed and performed. If it becomes necessary to exercise this authority repetitively or on a continuing basis in a particular area, the agency should submit a request to GSA as prescribed in 1-8.7 for HRGA designation or for rate adjustment if the area is already an HRGA.

(3) Travel which involves unusual circumstances may include, but is not limited to, the following situations:

(a) The traveler attends a meeting, conference, or training session away from his/her official duty station where lodging and/or meals must be procured at a prearranged place (such as the hotel where the meeting, conference, or training session is being held) and the lodging costs, incurred because of such prearranged accommodations, absorb all or practically all of the maximum per diem allowance;

(b) The traveler, by reason of the assignment, necessarily incurs unusually high expenses in the conduct of official business such as for superior or extraordinary accommodations including a suite or other quarters for which the charge is well above that which he/she would normally have to pay for accommodations; or

(c) The traveler necessarily incurs unusually high expenses incident to his/her assignment to accompany another traveler in a situation as described above.

(d) The temporary duty point is located in an area adjacent to a designated HRGA and the subsistence costs at available facilities are commensurate with those in the HRGA or the employee must of necessity obtain lodging in the HRGA.

(e) The traveler performs temporary duty in an area that has not been designated as an HRGA and due to the lack of availability of lower priced accommodations in the immediate area of the temporary duty site, the

May 20, 1983

(Effective: June 19, 1983)

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maximum per diem rate is inadequate; or the traveler performs temporary duty to an HRGA and the maximum actual expense reimbursement rate is substantially below that required to cover costs necessarily incurred. See 1-8.1c(2) regarding repeated use of this authority.

(f) The travel is to an area that is not designated as an HRGA but where the choice of accommodations is limited or the costs of accommodations are inflated because of conventions, sporting events, natural disasters, peak recreation season, a special occurrence at the temporary duty site (where the rates would not be inflated during normal times), or other causes which would reduce the number of available lodgings below the normal level.

d. Maximum to be stated in travel authorization. The amount per calendar day authorized by the agency or as prescribed herein for high rate geographical areas shall be stated in the travel authorization for a specific travel assignment.

e. Conditions warranting approval. If travel is performed without prior authorization or is authorized on a per diem basis and otherwise conforms to the provisions of this part, the actual and necessary subsistence expenses incurred may be approved within the authorized maximum rates as stated herein.

f. Subsistence payments for extended training assignments. The regulations governing the payment of subsistence expenses for extended training assignments are issued by the Office of Personnel Management (OPM) in part 410.603 of Title 5, Code of Federal Regulations. (See 1-7.3f.) These OPM regulations shall be used as required and referenced in 1-7.3f when an employee is authorized training subsistence payments for a training assignment at a temporary duty station over 30 calendar days. The training assignment may be located in a high rate geographical area, or any other location where actual subsistence expense reimbursement may be authorized in 1-8 of these regulations.

1-8.2. Authorized reimbursement.

a. Maximum daily reimbursement. When the actual subsistence expenses incurred during any one day are less than the daily rate authorized, the traveler shall be reimbursed only for the lesser amount. The daily rate shall not be prorated for fractions of a day; however, expenses incurred and claimed for a fraction of a day shall be reviewed and allowed only to the extent determined to be reasonable by the agency concerned. The maximum amount of reimbursement for actual subsistence expense travel which may be authorized or approved for each calendar day or fraction thereof is limited as follows:

(1) For travel within the conterminous United States to designated high rate geographical areas, under the general provisions of 1-8.1b, the maximum authorized rates have been set administratively as provided in 1-8.6. These are uniform maximum actual subsistence expense rates and are not subject to change by the agencies concerned, except as provided in 1-8.1b(1) and (2).

* (2) For travel within the conterminous United States involving unusual circumstances, the statutory maximum daily rate is \$75. Agencies shall determine appropriate and necessary daily maximum rates not to exceed this amount.

(3) For travel outside the conterminous United States involving unusual circumstances, the statutory maximum daily rate is \$33 per day plus the maximum per diem allowance officially established for the overseas locality in which the travel is performed. (See 1-7.2.) Agencies shall determine appropriate and necessary daily maximum rates not to exceed this limitation.

b. Allowable expenses. Actual subsistence expense reimbursement shall be allowed for the same type of expenses normally covered by the per diem allowance under the provisions of 1-7.1b.

c. Special rules for mixed travel (per diem and actual subsistence expense). Travel may be authorized or approved on both a per diem basis and an actual subsistence expense basis during a single trip when travel is performed in several locations including high rate geographical areas; however, only one method of reimbursement (per diem or actual subsistence expense) shall be authorized within the same day.

(1) Rate and method of reimbursement determined by location of temporary duty assignment. In instances of mixed travel involving both per diem and actual subsistence expense, or several high rate geographical areas, the method of reimbursement and authorized maximum rate for a calendar day (beginning at 12:01 a.m.) shall be the method and rate applicable for the temporary duty point where the traveler is located at the end of the day. The location of lodgings does not affect this determination. For example, when a traveler performs travel in a per diem area for part of a day and completes that day's travel in a high rate geographical area where he/she performs official duty (either that day or the following workday) and obtains lodging, the traveler

shall be reimbursed under the actual subsistence expense method for the entire day not to exceed the maximum rate prescribed for the high rate geographical area.

(2) Reimbursement for day of return. The method of reimbursement for the day of return to home or official station (where lodgings are not involved) shall be the same method of reimbursement authorized for the first day of travel. For example, if a traveler is authorized actual subsistence expense reimbursement for the first day of travel, reimbursement for the day of return to home or official station shall also be on an actual subsistence expense basis; if per diem is authorized for the first day of travel, per diem shall also be authorized for the day of return to home or official station.

(3) Reimbursement computation. A traveler's claim for reimbursement may include several different rates depending upon the location(s) in which travel is performed.

Note.—Par. 1-8.2 amended, FPMR Temp. Reg. A-11, May 19, 1975; Par. 1-8.2a(1) amended, FPMR Temp. Reg. A-11, Supp. 1, Jun. 27, 1975; Pars. 1-8.2c(1) and (3) amended, FPMR Temp. Reg. A-11, Supp. 4, Apr. 29, 1977; and Pars. 1-8.2a(2) and (3) amended, FPMR Temp. Reg. A-11, Supp. 11, Sept. 26, 1980.

1-8.3. Agency responsibilities, review, and administrative controls.

a. Delegation of authority. Heads of agencies may delegate, with provisions for limited redelegation, authority to authorize or approve travel under 1-8.1 as follows:

(1) The delegation or redelegation of authority to authorize or approve travel on an actual subsistence expense basis due to unusual circumstances of the travel assignment or to authorize a per diem allowance under the provisions of 1-8.1b(1) shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances involved in the travel assignment.

(2) Travel to designated high rate geographical areas is normally on an actual subsistence expense basis. Accordingly, the delegation or redelegation of authority to authorize or approve this type of travel should be at a lower administrative level than that stated in (1), above.

b. Review and administrative controls. Heads of agencies shall establish necessary administrative arrangements for an appropriate review of the justification for travel on the actual subsistence expense basis and of the expenses claimed by a traveler to determine whether they are allowable subsistence expenses and were necessarily incurred in connection with the specific travel assignment. Agencies shall ensure that travel on an actual subsistence expense basis is properly administered and shall take necessary action to prevent abuses.

Note.—Pars. 1-8.3a and b amended, FPMR Temp. Reg. A-11, May 19, 1975; and Pars. 1-8.3a thru 1-8.3a(2) amended, FPMR Temp. Reg. A-11, Supp. 1, Jun. 27, 1975.

1-8.4. Interruption of subsistence status.

a. Beginning and ending of leave. Except as stated below, if the time that leave of absence begins or terminates is within the traveler's prescribed hours of duty, subsistence allowance shall terminate or begin at such time. If leave of absence does not begin or terminate within the traveler's prescribed hours of duty, the traveler shall be regarded as being in subsistence status until midnight of the last day preceding the leave of absence and from 12:01 a.m. of the day following the leave of absence: Provided, That if after such leave of absence the traveler returns to a duty status at the same or different temporary duty station, lodging will be allowed only for the night preceding his/her first day's leave of absence or the night preceding his/her return to duty status.

b. Illness or injury. The provisions of 1-7.5b applicable to per diem instead of subsistence shall also apply to the allowance of subsistence expenses.

c. Fractional days of leave. Fractional leave of absence wholly within a day for half of the prescribed working hours or less shall be disregarded for subsistence purposes; where it exceeds half of the prescribed working hours, no subsistence shall be allowed.

d. Nonworkdays. A traveler shall be considered to be in subsistence status on nonworkdays under the same rules as are applied in 1-7.5a(2) with respect to the payment of per diem.

e. Indirect-route or interrupted travel. Where for the traveler's convenience or through the taking of leave there is interruption of travel or deviation from the direct route, the subsistence allowed shall not exceed that which would have been incurred on uninterrupted travel by a usually traveled route. (See 1-2.5 and 1-11.5a(3).)

f. Return to official station for nonworkdays. At the discretion of the administrative officials, a traveler may be required to return to his/her official station for nonworkdays. In cases of voluntary return of a traveler for nonworkdays to the official station or place of abode from which he/she commutes daily to the official station, the maximum reimbursement allowable for the round-trip transportation and actual subsistence en route shall be the necessary travel and subsistence expense which would have been allowable had the traveler remained at the temporary duty station.

1-8.5. Evidence of actual expenses. Actual and necessary subsistence expenses incurred on a travel assignment for which reimbursement is claimed by a traveler shall be itemized in a manner prescribed by the heads of agencies which will permit at least a review of the amounts spent daily for lodging, meals, and all other items of subsistence expenses. Receipts shall be required at least for lodging.

1-8.6. Designated high rate geographical areas (HRGA's). A traveler performing temporary duty travel to or within the cities designated as high rate geographical areas in appendix 1-A, shall automatically be placed in an actual subsistence expense status and be reimbursed for the actual and necessary subsistence expenses incurred, not to exceed the maximum rate prescribed for the particular HRGA as provided in paragraphs 1-8.1b and 1-8.2a(1).

NTE
\$ 75.00

Note.--Par. 1-8.6 was: added, FPMR Temp. Reg. A-11, May 19, 1975; amended, FPMR Temp. Reg. A-11, Supp. 3, Sept. 28, 1976; amended, FPMR Temp. Reg. A-11, Supp. 5, Mar. 8, 1978; amended, FPMR Temp. Reg. A-11, Supp. 7, Apr. 13, 1979; amended, FPMR Temp. Reg. A-11, Supp. 8, Jun. 27, 1979; amended, FPMR Temp. Reg. A-11, Supp. 9, Apr. 21, 1980; and amended, FPMR Temp. Reg. A-11, Supp. 11, Sept. 26, 1980.

1-8.7. Request for designation of HRGA's.

a. Agencies may submit a request to GSA for review and designation of a location as an HRGA on the basis of a determination that the maximum per diem rate is inadequate for travel to a specific city or area. These requests shall be submitted through or by the agency headquarters office to the General Services Administration (TT), Washington, DC 20406.

b. Requests for designation may be for a new HRGA or for increased rates and/or expansion of an existing HRGA and shall include the following information and cost data:

(1) Lodging costs for a wide range of hotel/motel facilities within proximity of the temporary duty point location(s) (hotel/motel brochures will suffice);

(2) Meal costs for breakfast, lunch, and dinner for several eating facilities in the area (restaurant menus are preferred, if available);

(3) Number of agency travelers and frequency of the travel to the particular area;

(4) Type or purpose of travel (inspections, investigations or audits, visits to contractor facilities, training, administrative travel; e.g., conferences or meetings, etc.);

(5) Name and location of activity visited (Government and non-Government). Also show other Federal activities located in or near the area that is being requested for designation as an HRGA; and

(6) Recommended boundary line (city, corporate limits, county, etc.) and maximum rate.

Note.--Par. 1-8.7 added, FPMR Temp. Reg. A-11, Supp. 9, Apr. 21, 1980.

an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to payments pursuant to subsection (a) of this section at the location where the interruption occurred.

(c) This section does not apply to a justice or judge, except to the extent provided by section 456 of title 28.

(As amended Pub.L. 96-346, § 1, Sept. 10, 1980, 94 Stat. 1148; Pub.L. 99-234, Title I, § 102, Jan. 2, 1986, 99 Stat. 1756.)

1986 Amendment. Subsec. (a). Pub.L. 99-234, § 102(a), designated existing provisions as par. (1) and, as so designated, substituted provisions relating to entitlement to a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States or reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States, or a combination of payments, for provisions relating to entitlement to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed \$50, and (2) a per diem allowance for travel outside the continental United States, that may not exceed the rate established by the President, or his designee, for each locality where travel is to be performed, and in cases where there is travel consuming less than a full day, such rate allocated proportionately, and added pars. (2) and (3).

Subsec. (b). Pub.L. 99-234, § 102(a), designated existing provisions as par. (1) and, as so designated, substituted provisions relating to conditions of termination of travel and authority for reimbursement for expenses and payments pursuant to subsec. (a) of this section, for provisions relating to an employee while traveling becoming incapacitated by illness or injury not due to his own misconduct, and entitlement to the per diem allowance and appropriate transportation expenses, to designated post of duty, etc., and added pars. (2) and (3).

Subsec. (c). Pub.L. 99-234, § 102, redesignated subsec. (e) as (c). Former subsec. (c), which provided "Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$75 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title", was struck out.

Subsec. (d). Pub.L. 99-234, § 102(a), struck out subsec. (d) which provided "Under regulations prescribed under section 5707 of this title, for travel outside the continental United States, the Administrator of General Services or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the per diem

allowance would be less than these expenses, except that such reimbursement shall not exceed \$33 for each day in a travel status outside the continental United States plus the locality per diem rate prescribed for such travel".

Subsec. (e). Pub.L. 99-234, § 102(b), redesignated subsec. (e) as (c).

1980 Amendment. Subsec. (a). Pub.L. 96-346, § 1(1), increased to \$50 from \$35 the maximum per diem allowance for travel inside the continental United States.

Subsec. (c). Pub.L. 96-346, § 1(2), increased to \$75 from \$50 the maximum reimbursement for travel within the continental United States.

Subsec. (d). Pub.L. 96-346, § 1(3), increased to \$33 from \$21 the maximum reimbursement for travel outside the continental United States.

Effective Date of 1986 Amendment. Amendment by Pub.L. 99-234 effective on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub.L. 99-234, set out as a note under section 5701 of this title.

Reports to Congress of Per Diem and Mileage Allowance Payments for Fiscal Years 1979 Through 1981 by February 1, June 1, 1981, and June 1, 1982; Reduction of Payments; Rules and Regulations. Section 3 of Pub.L. 96-346 provided that:

"To make available to Congress information in order that it may evaluate and reduce excessive per diem and mileage allowance payments:

"(a) The Administrator of General Services shall, based upon a sampling survey, collect by fiscal year the following information (compiled separately for payments made under sections 5702 and 5704 of title 5, United States Code [this section and section 5704 of this title] and for each agency evaluated) with respect to agencies spending more than \$5,000,000 annually on transportation of people:

"(1) identification of the general causes and purposes of travel, both foreign and domestic, estimates of total payments, average cost and duration of trip, and an explanation of how these estimates were determined; and

"(2) identification by specific agency of travel practices which appear to be inefficient from a travel management or program management standpoint and recommendations to the Congress on the applicability of alternatives to travel as well as other techniques to improve the use of travel in carrying out program objectives by relating travel to mission.

"(b)(1) The Administrator shall report the information required by subsection (a) to the Congress for fiscal year 1979 by February 1, 1981; for fiscal year 1980 by June 1, 1981; and for fiscal year 1981 by June 1, 1982.

"(2) The Ad which rules an ensure that the various agency comparisons ar him to compi included in the

Legislative Hi purpose of Pul Cong. and Adm 96-346, 1980 U p 2712

Cross Reference Interagency Health. allowan ence. see section Trade Reimburse sury on protec penses. see sect Finance.

Construction w Review 11

1/2. Constructio Federal Labor tion of section 7 agencies to gra representing the with the agencie allowance and r was not support Alcohol, Tobacc Relations Autho

2. Rules and re Though Joint across-the-board determining rea claims for meals counting and fi expense to be dollar limitation JTR par. C461 expenses reimbu area rate in spec are not incurred cation to substi commercial lodg 62 Op.Comp.G

3. Persons ent Supreme Cou cies could not a pay travel exp negotiators did ing such payme serve conveni in the primary reau of Alchoh Labor Relation

State Nation travel and per representatives Florida Nat. Authority, C.A denied 104 S.C

THE WHITE HOUSE
WASHINGTON

May 23, 1986

MEMORANDUM FOR NANCY F. JANES

FROM: JAY B. STEPHENS

SUBJECT: Attached

Per our conversation.

5/23/86

New legislation -

January

TDY July 1 - new regs

Statutory cap of \$75.00

Comm'n - given different authority

"per diem in lieu of subsistence"
refers to U.S. Code.

actual expenses -

check
wording

50.00 is statutory max. per diem
\$75.00 max. actual expenses
when ~~the~~ max per diem would be
less than actual expenses ~~NTE~~ \$75
when per diem inadequate

July 1 - takes statutory caps off
rates by cities
up to 150% of per diem.

Unique to agency in authorizing legislation.

41 CFR ? → 101-7 FPMR 101-7

How much is NASA allowing?

5/23/86 Tom Martin 453-2283

- they are getting the maximum.
- luncheons - they have provided w/in \$75 max.
- can't contract for meals > \$75.00

all locations at \$75.00.