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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**2 CFR Part 1800**

**RIN 2700-AE29**

**Federal Regulation Supplement: Revisions to Uniform**

**Administrative Requirements, Cost Principles and Audit**

**Requirements for Federal Awards (NASA Case 2015-N030)**

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

**ACTION:** Proposed rule.

**SUMMARY:** NASA is proposing to amend the NASA regulation, titled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to modify the requirements related to information contained in a Federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions related to indirect cost charges and access to research results.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by NASA Case 2015-N030, using any of the following methods:

- ***Regulations.gov:*** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "NASA

Case 2015-N030" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "NASA Case 2015-N030." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "NASA Case 2015-N030" on your attached document.

- E-mail: jennifer.l.richards@nasa.gov. Include NASA Case 2015-N030 in the subject line of the message.
- Fax: (202) 358-3082.
- Mail: National Aeronautics and Space Administration, Headquarters, Office of Procurement, Contract and Grant Policy Division, Attn: Ms. Jennifer Richards, Room 5M34, 300 E. Street SW, Washington, DC 20546-0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Richards, NASA HQ, Office of Procurement, Contract and Grant Policy Division, Room 5M34, 300 E. Street SW, Washington, DC 20456-0001. Telephone 202-358-0047; facsimile 202-358-3082.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

NASA is proposing the following changes to NASA regulation Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR part 1800):

1. Modify the requirement related to information contained in a Federal award for commercial firms with no cost sharing

requirement. NASA requirements for information contained in a Federal award can be found at 2 CFR 1800.210, which adopts and supplements 2 CFR 200.210. Title 2 CFR 200.210 includes a list of data elements that must be included in a Federal award, including indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414 Indirect (F&A) costs). Although 2 CFR part 200 does not apply to commercial firms, NASA, in its adoption of the regulation at 2 CFR 1800.3, Applicability, added commercial firms with no cost sharing requirement to the list of applicable entities. Therefore, the requirement to include an indirect cost rate on a notice of Federal award is applicable to commercial firms with no cost sharing requirement.

2. Add a new term and condition to address those instances when a recipient has a change in its negotiated indirect cost rate agreement during the period of performance of an award. See 2 CFR 200.56, 200.57, and 200.414 for more information on indirect (facilities & administrative) costs. NASA has discovered that, on occasion, when a recipient's indirect cost rate has changed as a result of a new negotiated indirect cost rate agreement, the change in rate has not always been captured when indirect costs have been charged to NASA. As a result, some recipients have either overcharged or undercharged NASA for indirect costs.

3. Modify an existing term and condition and add a new term and condition to ensure recipients meet requirements associated with, "NASA Plan: Increasing Access to the Results of Scientific Research" (see

[http://science.nasa.gov/media/medialibrary/2015/07/08/NASA\\_Plan\\_for\\_increasing\\_access\\_to\\_results\\_of\\_federally\\_funded\\_research1.pdf](http://science.nasa.gov/media/medialibrary/2015/07/08/NASA_Plan_for_increasing_access_to_results_of_federally_funded_research1.pdf)). This plan was issued in response to the Executive Office of the President's, Office of Science and Technology Policy (OSTP) Memorandum for the Heads of Executive Departments and Agencies, dated February 22, 2013, "Increasing Access to the Results of Federally Funded Scientific Research." Through this memorandum, OSTP directed all agencies with more than \$100 million in annual research and development expenditures to prepare a plan for improving the public's access to the results of federally funded research. Part A of NASA's plan focuses on digital unclassified scientific research data, which are research data that can be stored digitally and accessed electronically.

To facilitate increased access to such data, NASA has updated its research data policy to require all investigators submitting a research proposal or research project plan to NASA to include a Data Management Plan for managing and providing access to final research data or to state why their data cannot or need not be made publicly available. Part B of the plan focuses on

the public access to peer-reviewed scientific research manuscripts. The scope of applicability of this part includes all final peer-reviewed scientific research manuscripts authored or coauthored by investigators funded for this research by NASA-appropriated funds.

## **II. Analysis**

After consideration of feedback from commercial firms expressing concern that indirect cost rates are sensitive financial information which should not be available on documents that could potentially be released to the public, NASA has determined that excluding indirect cost rates from notices of Federal award to commercial firms with no cost sharing requirement is a prudent business decision that protects sensitive financial information.

In order to ensure that the permitted amount of indirect costs is being charged to an award, NASA is proposing a new term and condition requiring recipients that have changes to their indirect cost rate agreement during the period of performance of an award to apply the approved rate to covered direct costs expended during the time frame of the rate agreement, even if the agreement is not on file with NASA. This will prevent NASA from overpaying or underpaying for indirect charges and ensure recipients are receiving what they are legally allowed.

To address the NASA plan requirements for awardees from non-NASA organizations that publish scientific research or compile digital datasets resulting from research, development, and technology programs, NASA is proposing the following revisions:

- Modify an existing term and condition, 2 CFR 1800.902

Technical Publications and Reports, to add a requirement for awardees with research and research-related awards to follow additional reporting requirements at 2 CFR 1800.930 Access to Research Results.

- Add a new term and condition requiring recipients to comply with their approved Data Management Plan submitted with their proposal, and as modified upon agreement by the recipient and NASA from time to time during the course of the period of performance. In addition, this new term and condition will ensure that any Final Peer-Reviewed Manuscripts are submitted to the NASA-designated repository, currently the PubMed Central system at [www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov), within one year of peer-review or publication by a journal, whichever is earlier. Furthermore, it will ensure that any publisher's agreements entered into by an awardee will allow for the awardee to comply with these requirements including submission of Final Peer-Reviewed Manuscripts to the NASA-designated repository, currently the PubMed Central system, with sufficient rights to permit such repository to use such Final Peer-Reviewed Manuscript in its

normal course, including rights to permit users to download XML and plain text formats. Finally, the grantee agrees to be responsible for, and defend NASA against, any royalties, fees, or other costs claimed against NASA or for which NASA may be held liable as a consequence of awardee failing to comply with the foregoing and include in annual and final reports a list of Final Peer-Reviewed Manuscripts covered by this term and condition.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

### **IV. Paperwork Reduction Act**

This proposed rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35; however, these changes to 2 CFR 1800 do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 2700-0092, entitled Financial Assistant Awards/Grants and Cooperative Agreements.

**List of Subjects in 2 CFR Part 1800**

Government financial assistance.

**Manuel Quinones,**

*NASA Federal Register Liaison.*

Accordingly, 2 CFR part 1800 is proposed to be amended as follows:

**PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,  
AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

1. The authority citation for 2 CFR part 1800 continues to read as follows:

Authority: 51 U.S.C. 20113 (e), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200

2. Revise § 1800.210 to read as follows:

**§ 1800.210 Information contained in a Federal award.**

NASA waives the requirement for the inclusion of indirect cost rates on any notice of Federal award for commercial firms with

no cost sharing requirement. The terms and conditions for NASA may be found at Appendix B of this Part and [https://prod.nais.nasa.gov/pub/pub\\_library/srba](https://prod.nais.nasa.gov/pub/pub_library/srba).

3. Amend Appendix B to part 1800 by:

- a. Under 1800.902 Technical Publications and Reports, adding paragraph (a) (4); and
- b. Adding 1800.929 Indirect Costs and 1800.930 Access to Research Results.

The additions read as follows:

**Appendix B to Part 1800—Terms and Conditions**

\* \* \* \* \*

**1800.902 Technical Publications and Reports.**

\* \* \* \* \*

(a) \* \* \*

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(4) For research and research-related awards, see additional reporting requirements at 1800.930 Access to Research Results.

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**1800.929 Indirect Costs.**

Prescription — The Grant Officer shall include this term and condition in all awards with indirect costs, excluding those awards using the 10% de minimis rate.

*Indirect Costs*

If during the course of this award, the approved indirect cost rate is revised, changed or removed, that rate must be applied, as allowed, to the covered direct costs that are expended during the time frame of that rate agreement. Any corrections, either up or down, to the approved budget submitted with the awarded application must be reflected in the awardees' records of costs and should be audited as such.

(End of Term and Condition)

#### **1800.930 Access to Research Results**

Prescription—The Grant Officer shall include this term and condition in all research and research-related awards.

##### *Access To Research Results*

(a) This award is subject to the requirements of the, "NASA Plan: Increasing Access to the Results of Scientific Research," which covers public access to digital scientific data and peer-reviewed publications. For purposes of this term and condition, the following definitions apply:

- (1) Awardee: Any recipient of a NASA grant or cooperative agreement, its investigators, and subrecipient (subaward or contract as defined in 2 CFR Part 200.92 and 200.22, respectively) at any level.
- (2) Final Peer-Reviewed Manuscript: The final text version of a peer-reviewed article disclosing the results of scientific

research which is authored or co-authored by the Awardee or funded, in whole or in part, with funds from a NASA award, that includes all modifications from the publishing peer review process, and all graphics and supplemental material associated with the article.

(b) The recipient shall:

(1) Comply with their approved Data Management Plan submitted with its proposal, and as modified upon agreement by the recipient and NASA from time to time during the course of the period of performance.

(2) Ensure that any Final Peer-Reviewed Manuscript is submitted to the NASA-designated repository, currently the PubMed Central system at [www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov). Ensure that the Final Peer-Reviewed Manuscript is submitted to PubMed Central within one year of peer-review or publication by a journal, whichever is earlier.

(3) Ensure that any publisher's agreements entered into by an Awardee will allow for the Awardee to comply with these requirements including submission of Final Peer-Reviewed Manuscripts to the NASA-designated repository, as listed in the above bullet, with sufficient rights to permit such repository to use such Final Peer-Reviewed Manuscript in its normal course, including rights to permit users to download XML and plain text formats.

(4) Agree to be responsible for, and defend NASA against, any royalties, fees, or other costs claimed against NASA or for which NASA may be held liable as a consequence of Awardee failing to comply with the foregoing. Include in annual and final reports a list of Final Peer-Reviewed Manuscripts covered by this term and condition.

(End of Term and Condition)

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