

(4) The amounts, if any, awarded for fees and expenses with an explanation of the reasons for any difference between the amount requested and the amount awarded. Further, if the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

(b) When the Agency appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

[51 FR 15311, Apr. 23, 1986, as amended at 60 FR 12669, Mar. 8, 1995]

#### § 1262.308 Agency review.

(a) Within 30 calendar days of the receipt of the adjudicative officer's initial decision on the fee application, either the applicant or agency counsel may seek Agency review of the decision; or, the NASA Administrator, upon the recommendation of the General Counsel or other designee, may decide to review the decision based on the record. Whether to review a decision is solely a matter within the discretion of the NASA Administrator. A 15-day notice of such review will be given the applicant and agency counsel, and a determination made not later than 45 days from the date of notice. The Administrator may make a final determination concerning the application or remand the application to the adjudicative officer for further proceedings.

(b) If neither the applicant nor agency counsel seek review, and the NASA Administrator does not on own initiative take a review, the adjudicative officer's initial decision on the fee application shall be the final administrative decision of the Agency 45 days after it is issued.

#### § 1262.309 Judicial review.

Judicial review of final Agency decisions on awards may be sought under 5 U.S.C. 504(c)(2), which provides: If a

party other than the United States is dissatisfied with a determination of fees and other expenses made under [this part], that party may, within 30 days after the [final administrative] determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court's determination of any appeal heard under this [authority] shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by the substantial evidence.

[51 FR 15311, Apr. 23, 1986, as amended at 60 FR 12669, Mar. 8, 1995]

#### § 1262.310 Payment of award.

(a) An applicant seeking payment of an award shall submit to the paying agency a copy of the Agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The submission to NASA should be addressed as follows:

Director, Financial Management Division,  
NASA Headquarters, Washington, DC 20546.

(b) The Agency will pay the amount awarded to the applicant within 60 days, if feasible, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

### PART 1263—DEMAND FOR INFORMATION OR TESTIMONY SERVED ON AGENCY EMPLOYEES; PROCEDURES

Sec.

1263.100 Purpose and scope.

1263.101 Definitions.

1263.102 Procedure when a demand is issued in a legal proceeding involving the United States.

1263.103 Procedure when a demand is issued in a legal proceeding not involving the United States.

1263.104 Production, disclosure, or testimony prohibited unless approved.

**§ 1263.100**

- 1263.105 Considerations in determining whether production or disclosure should be made.
- 1263.106 Final decision of the General Counsel as to production, disclosure, or appearance.
- 1263.107 Procedure to be followed when response to a demand is required before the General Counsel or designate has reached a final decision.
- 1263.108 Procedure in the event of an adverse ruling.
- 1263.109 Considerations in determining whether these procedures should be waived.
- 1263.110 Intention to provide guidance.

AUTHORITY: 5 U.S.C. 301, 42 U.S.C. 2473(c)(1).

SOURCE: 55 FR 28370, July 11, 1990, unless otherwise noted.

**§ 1263.100 Purpose and scope.**

(a) This part sets forth procedures to be followed with respect to the production or disclosure of official information or records and/or the testimony of present or former employees of the National Aeronautics and Space Administration relating to any official information acquired by any employee of NASA as part of the performance of that employee's official duties or by virtue of that employee's official status, where a demand for such production, disclosure, or testimony is issued in a federal, state, or other legal proceeding.

(b) This part does not apply to any legal proceeding in which an employee is to testify, while in leave status, as to facts or events that are in no way related to the official duties of that employee or to the functions of the NASA.

**§ 1263.101 Definitions.**

(a) *Agency*—As referred to in this regulation, Agency means the National Aeronautics and Space Administration.

(b) *Demand*—A subpoena, order, or authorized request for official information, or for the appearance and testimony of NASA personnel, issued as the result of a legal proceeding.

(c) *Employee*—Includes all present and former officers and employees of the National Aeronautics and Space Administration who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Administrator of the agency.

(d) *Legal proceeding*—Includes any proceeding before a court of law or equity, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(e) *Legal proceeding involving the United States*—Any proceeding before a court of law or equity brought on behalf of, or against the United States, NASA or NASA employees, and resulting from alleged NASA operations.

(f) *Official information*—All information of any kind, however stored, that is in the custody and control of NASA or was acquired by NASA personnel as part of official duties or because of official status while such personnel were employed by or on behalf of the NASA.

**§ 1263.102 Procedure when a demand is issued in a legal proceeding involving the United States.**

Whenever an employee or former employee of NASA receives a demand for production of materials or the disclosure of information, or for appearance and testimony as a witness in a legal proceeding in which NASA or the United States is a party, the employee shall immediately notify in writing the Installation Chief Counsel for Installation employees, the General Counsel for Headquarters employees, or the Attorney-Adviser to the Inspector General (IG) for IG employees. This notice must include copies of all pertinent legal documents and a summary of the employee's knowledge concerning the legal proceeding in question. When necessary, this information may be reported orally, followed by a written confirmation.

**§ 1263.103 Procedure when a demand is issued in a legal proceeding not involving the United States.**

Whenever an employee or former employee of the Agency receives a demand for production or disclosure of official information in a legal proceeding not involving the United States, the employee shall immediately notify the General Counsel or designate. In addition, the party causing the demand to be issued shall furnish the Office of General Counsel a written, detailed statement of the information sought and its relevance to the proceeding in