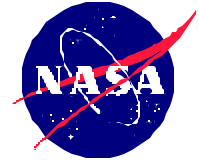


National Aeronautics and  
Space Administration

**Office of Inspector General**  
Headquarters  
Washington, D.C. 20546-0001



Reply to Attn of: W

July 30, 2001

TO: A/Administrator

FROM: W/Inspector General

SUBJECT: Ames Research Center Exchange Activities, G-00-003

The Office of Inspector General (OIG) conducted an inspection of the Ames Research Center (Ames) Exchange, as part of our overall review of NASA Exchange operations.<sup>1</sup> The purpose of our review was to determine whether Exchanges are managing operations and activities in accordance with NASA Policy Directive (NPD) 9050.6E, NASA Exchange Activities,<sup>2</sup> other applicable statutes and regulations and sound business and management practices.

The Ames Exchange, an instrumentality of the Government, is responsible for operating activities that contribute to the efficiency, welfare, and morale of Ames employees. The Exchange's activities and operations are primarily funded with non appropriated funds.<sup>3</sup> The Ames Exchange operates a cafeteria, vending machines, gift shop, base housing, a child care center, recreational facilities, and a business office. In general, the Ames Exchange offered many and varied programs and activities to benefit the Ames workforce. Our recommendations were aimed at improving the Ames Exchange business practices and compliance with governing guidelines.

We found that Center management used Ames Exchange funds for activities for which appropriated funds were available, including the Administrator's Fund. Additionally, the Exchange and the Center did not fully comply with regulations required in implementing and reporting of Randolph-Sheppard Act.<sup>4</sup> In our previous reviews, we found similar concerns at

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<sup>1</sup> The OIG's inspection unit is conducting comprehensive reviews of Center Exchange operations, activities, business practices, procedures, and policies. The OIG's auditors are performing quality control reviews of the Exchanges mandatory external audits. The review of the Ames Exchange external audit was issued on September 11, 2000.

<sup>2</sup> NPD 9050.6E is applicable to NASA Headquarters and NASA Centers, including component facilities.

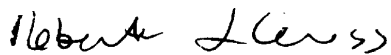
<sup>3</sup> Nonappropriated funds are monies not appropriated by the United States Congress. The Ames funds are derived primarily from the sale of goods and services to Center personnel and visitors.

<sup>4</sup> One purpose of the Randolph-Sheppard Act is either provide preference to the blind in operating vending facilities located on Federal property and buildings or to collect a percentage of vending machine income for employment and education programs for the blind.

Glenn Research Center and Langley Research Center. These repetitive issues may indicate an agency-wide misunderstanding of these two areas.

The Ames Exchange assumed responsibility for several business ventures when the Navy facility closed.<sup>5</sup> The Exchange executed several Space Act agreements<sup>6</sup> as mechanisms to acquire these business ventures. We found that tighter controls need to be placed on execution of these agreements to ensure compliance with applicable NASA directives, regulations and Federal laws. In particular, Center management needs to ensure that all revenues generated by lease arrangements, in excess of certain costs, be deposited with the United States Treasury as miscellaneous receipts.

Management concurred with all of the recommendations contained in the report.



Roberta L. Gross

Enclosure

Ames Research Center Exchange Activities, G-00-003

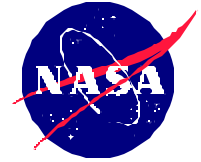
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<sup>5</sup> The business ventures include the lease of space to the Golden Bay Federal Credit Union, the United States Geological Survey for recreational vehicle parking, and Santa Clara County for a Meals on Wheels program.

<sup>6</sup> Space Act agreements are generally those agreements entered into by NASA under the extraordinary "other transactions" authority conferred by §203(c)(5) of the National Aeronautics and Space Act of 1958 (as amended), Public Law 85-568 (the Space Act).

National Aeronautics and  
Space Administration

**Office of Inspector General**  
Headquarters  
Washington, D.C. 20546-0001



Reply to Attn of: W

July 30, 2001

TO: Ames Research Center  
Attn: 200-1/Center Director

FROM: W/Assistant Inspector General for Inspections, Administrative  
Investigations, and Assessments

SUBJECT: Ames Research Center Exchange Activities, G-00-003

The Office of Inspector General (OIG) is reviewing NASA Exchange (Exchange) activities. The purpose of our reviews is to determine whether Exchanges are managing operations and activities in accordance with NASA Policy Directive (NPD) 9050.6F, *NASA Exchange Activities*<sup>1</sup> and other applicable statutes and regulations. The Ames Research Center (Ames) Exchange inspection is the third in our series of NASA Center Exchange reviews.<sup>2</sup>

In the course of conducting our review, management implemented corrective action for two of our preliminary recommendations based on initial findings. The associated findings, recommendations, and corrective actions are described in Appendix A.

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<sup>1</sup> NPD 9050.6F is applicable to NASA Headquarters and NASA Centers, including component facilities (See Appendix B).

<sup>2</sup> In a related activity, the NASA OIG Office of Audits conducted a quality control review of the Ames Exchange's external auditor (Quality Control Review Report: *Strother & Associates Audit of National Aeronautics and Space Administration Ames Research Center Exchange Financial Statements for Fiscal Year Ended September 30, 1998*, dated September 11, 2000.) Our OIG auditors' review recommended, and the auditing firm and NASA management concurred, that the external auditor comply with the generally accepted auditing standards for assessing risk and in planning the audit, and that the audit actually be conducted in accordance with government auditing standards.

## **BACKGROUND**

The Exchange, an instrumentality of the Government, is responsible for operating activities that contribute to the efficiency, welfare, and morale of Ames employees. The Exchange's activities and operations are primarily funded with nonappropriated funds.<sup>3</sup>

The Exchange is subject to oversight by Ames management. The Center Director is responsible for the general management of the Exchange. The Exchange Council (Council), whose members are appointed by the Center Director, is responsible for overseeing Exchange financial and operational activities. The Council is composed of a Chair, a Deputy Chair, an Exchange Operations Manager (Operations Manager), a Management Advisor, a Secretary, and representatives from various Center organizations. Currently, the Exchange generates funds from a cafeteria, vending machines, a visitor's center gift shop, fees charged to a local credit union, a swimming pool, lodging quarters, a park, and a recreational vehicle storage lot.

The Operations Manager, a civil servant employee in the Center Operations Directorate, has primary management responsibility for the Exchange. Specific assignments include overseeing the Exchange activities and business ventures, working closely with the Council members to manage Exchange operations, and evaluating performance and compensation levels of the Exchange Treasurer (Treasurer) and other employees. In addition, the Operations Manager is the Ames focal point for ensuring compliance with the Randolph-Sheppard Act (RSA) requirements governing certain preferences granted to organizations supporting sight-impaired individuals.

The Treasurer, an Exchange employee, is primarily responsible for managing the day-to-day operations of the various business activities (i.e., the cafeteria, gift shop, swimming pool, lodging quarters, and recreational vehicle storage lot). The Treasurer deposits income generated by Exchange operations into the bank. The Treasurer also pays Exchange bills and maintains detailed general ledgers of the various activities operated by the Exchange. The Exchange uses profits from its sales receipts and activities to fund a variety of Centerwide activities designed to promote the welfare and morale of Center employees.

### **I. EXCHANGE EXPENDITURES**

Our team found that the Exchange Council generally promotes and actively supports a wide variety of employee welfare and recreational programs for the Ames community. For instance, the Exchange funds a variety of hobby and sports clubs. The Council allocates funds to the clubs based on the clubs' annual budget requests. Budgets and expenditures require the approval of two-thirds of the voting Council members. Additional fund requests can be presented during the monthly

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<sup>3</sup> Nonappropriated funds are monies not appropriated by the United States Congress. The Ames funds are derived primarily from the sale of goods and services to Center personnel and visitors.

Council meetings.<sup>4</sup> In addition, The Office of the Director submits an annual budget request to the Council for funds. For the last 3 years, this budget ranged from \$3,000 to \$4,500. This fund pays for such items as gifts and refreshments for official visitors. The Council reviews the request to determine whether such expenses can be reconciled as legitimate Exchange-related expenditures.

Official reception and representation expenses are more properly paid for from Congressionally appropriated funds such as the Administrator's Fund rather than from the Exchange.<sup>5</sup> The Center Director may request monies from the Administrator's fund for these types of expenditures or use other appropriated funds consistent with recently revised General Services Administration (GSA) regulations governing the purchase of refreshments at Government-sponsored conferences.<sup>6</sup> The use of appropriated funds for such authorized activities would permit the application of Exchange proceeds to fund additional employee recreational and welfare activities.

**Recommendation 1:** The Center Director should ensure that appropriated funds are used to pay for official Agency expenditures.

## II. SPACE ACT AGREEMENTS

The Exchange assumed responsibility for several business ventures when the Navy facility closed as a result of a Base Realignment and Closure (BRAC) action. The Exchange executed several Space Act agreements<sup>7</sup> as mechanisms to acquire these business ventures.

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<sup>4</sup> Randomly contacted club members responded positively when asked their opinions of the Exchange and praised the Exchange for its support of clubs and other employee activities. The Exchange supports the Softball Team, Volleyball Team, Sailing Club, Toastmasters Club, Model Airplane Club, Bowling Club, Golf Club, Scuba Club, and the Ballroom Dancing Club.

<sup>5</sup> NPD 9050.4F, *Administrator's Fund*, dated March 2, 2000, establishes policy and procedures governing the use of the funds provided by annual NASA Authorization and Appropriations Acts. The Administrator's Fund may be used for expenses incurred for official reception and representation (See Appendix C). The Associate Administrator for Headquarters Operations issued guidelines on November 21, 2000, relating Center use of the Administrator's Fund in response to a NASA OIG recommendation to "issue supplemental guidance on the use of the Administrator's fund for official reception and representational expenses, and provide for sub-allocations to individual Centers, as necessary" (*Glenn Research Center Exchange Activities*, G-99-016, final report, September 29, 2000).

<sup>6</sup> Prior to the GSA regulation, agencies were not normally allowed to provide light refreshments for employees at Government expense. Employees had to buy such refreshments themselves. Under the new regulation, Government agencies can provide, under certain restrictions, light refreshments at Government expense.

<sup>7</sup> Space Act agreements are generally those agreements entered into by NASA under the extraordinary "other transactions" authority conferred by §203(c)(5) of the National Aeronautics and Space Act of 1958 (as amended), Public Law 85-568 (the Space Act).

## A. Golden Bay Federal Credit Union

The Golden Bay Federal Credit Union is housed in NASA-owned buildings on NASA Ames property. Pursuant to a Space Act agreement between the credit union and the Ames Exchange, the credit union has exclusive use of Building 556 and a portion of Building 235 for the purpose of operating a full service credit union at Ames. In return, the credit union pays the Exchange the sum of \$55,506.25 per year.<sup>8</sup> The signatories to the Agreement were the Exchange Council Chairperson, the Operations Manager, and the President of the credit union. The Space Act contains three provisions relevant to this Agreement:

1. Section 203(c)(3) of the Space Act authorizes NASA

to provide by contract or otherwise for cafeterias and other necessary facilities for the welfare of employees of the Administration at its installations.

. . .

This language provides the authority for the establishment and operation of NASA Exchanges at NASA facilities.<sup>9</sup>

2. Section 203(c)(5) of the Space Act authorizes NASA

without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), to enter into and perform such contracts, leases, cooperative agreements, or *other transactions* as may be necessary in the conduct of its work and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution.

This “other transactions” language is considered the statutory authority for NASA to enter into what have become known as Space Act Agreements.

3. Section 203(c)(3) of the Space Act authorizes NASA to acquire such real or personal property as the Administration deems necessary, and “to lease to others such real and personal property. . . .”

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<sup>8</sup> This amount was based on the size of the building (approximately 10,375 square feet). The term of the Agreement began on May 1, 1998, and is intended to be automatically renewed at 5-year intervals for a period of 25 years.

<sup>9</sup> NASA’s internal guidelines for the exercise of this authority are found in NPD 9050.6E, *NASA Exchange Activities*.

NASA's guidelines, policies, and procedures for creating or entering into Space Act agreements are contained in NASA Procedures and Guidelines (NPG) 1050.1, *Space Act Agreements Manual*. Under section 5a of NPD 1050.1, *Authority To Enter Into Space Act Agreements*, NASA Center Directors are generally responsible for negotiating and executing Space Act agreements within their areas of jurisdiction. Under section 5f of NPD 1050.1, Center Directors may delegate the authority to negotiate and execute Space Act agreements to other NASA employees, but that delegation must be in writing and must indicate the extent of the delegation.

Our review of applicable statutes, regulations, and policy raises serious questions regarding the Space Act agreement between the Ames Exchange and Golden Bay Federal Credit Union. The authority to enter into such an agreement with respect to an Exchange activity appears to be vested with the Associate Administrator for Management Systems and the Director, Facilities Engineering Division, in accordance with 14 CFR §§ 1204.501 and 1204.504, neither of whom is a signatory to the agreement.<sup>10</sup> Even if the signatories to the Space Act agreement had proper authority to do so, the agreement fails to conform to NASA *Financial Management Manual* (FMM) 9090<sup>11</sup> and Federal law,<sup>12</sup> which require

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<sup>10</sup> Under 14 CFR § 1204.501(a)(2), the Associate Administrator for Management Systems and the Director, Facilities Engineering Division, are delegated the authority to:

(iv) Grant easements, leaseholds, licenses, permits, or other interests (wherever located) controlled by NASA.

(v) Grant the use of NASA-controlled real property and approve the acquisition and use of nongovernment owned real property for any NASA-related, nonappropriated fund activity purpose with the concurrence of the NASA Comptroller.

14 CFR § 1204.504 (d) relegates the above authority down to the Center Director level, but provides that the delegated authority “[M]ay not be exercised with respect to real property which is proposed for use by a NASA Exchange and subject to the provisions of NASA Management Instruction 9050.6, *NASA Exchange Activities*.”

<sup>11</sup> One key provision is found at section 9091-3f, which contains the following definition and discussion of “user fees.”

USER FEES. All charges to the public for reimbursable or partially reimbursable activities. User fees may either reimburse NASA appropriations or be deposited into Treasury miscellaneous receipts, depending on legislative authorities, type of cost, and budgetary arrangements governing the particular agreement. Collections related to costs not funded by current NASA appropriations (such as depreciation) are nearly always required to be deposited into miscellaneous receipts.

<sup>12</sup> The “miscellaneous receipts” statute is 31 USC § 3302, which states, “[A]n official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.” Also applicable is 40 USC § 490(k), which states:

Any executive agency, other than the General Services Administration, which provides to anyone space and services set forth in subsection (j) of this section, is authorized to charge the

that all revenues generated by the lease, in excess of certain costs, be deposited with the U.S. Treasury as miscellaneous receipts.

The legal concerns raised by our review of this document are pertinent to the other Space Act agreements executed by the Exchange and described below.

### **B. Storage of Trailers at Recreational Vehicle Parking**

The Exchange and the United States Geological Survey (USGS) entered into a Space Act agreement for the lease of an area known as the “Engine Test Area.” The space is used to store trailers on NASA property at Moffett Field. The USGS pays the Exchange \$2,880.00 annually.

### **C. Meals on Wheels**

The Space Act agreement between the Exchange and Santa Clara County (County) allows the County to use the Building 3 kitchen as a food storage staging area. NASA owns Building 3. The County’s contractor operates a full service Meals on Wheels program to deliver food to homes and congregate sites. The County pays the Exchange \$49,014.47 annually based upon a square footage rate.

**Recommendation 2:** The Center Director should mandate that thorough reviews of Exchange-related Space Act Agreements are conducted to ensure that executed Space Act agreements comply with all applicable NASA directives, regulations, and Federal laws.

## **III. EXCHANGE BUSINESS ACTIVITIES**

### **A. Temporary Lodging Quarters**

In September 1999, the U.S. Naval Reserve transferred the operation of the temporary lodging facilities to the Exchange. The temporary lodging facilities provide low-cost lodging for Ames visitors, students, military personnel, and disaster assistance personnel.

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occupant for such space and services at rates approved by the Administrator [of GSA]. Moneys derived by such executive agency from such rates or fees shall be credited to the appropriation or fund initially charged for providing the service, except that amounts which are in excess of actual operating and maintenance coats of providing the service shall be credited to miscellaneous receipts unless otherwise authorized by law.



In Fiscal Year 1998, the OIG published an audit report that identified certain risks associated with a proposed venture of acquiring housing units near Ames.<sup>13</sup> The audit identified risk of exposure to potential tort and environmental liability. These concerns are applicable to the Exchange's management of the temporary lodging facilities.

**Recommendation 3:** The Center Director should continue to ensure that a thorough review of liability issues associated with the Exchange's involvement in the temporary lodging facilities is conducted and that appropriate measures are taken accordingly.

## **B. Mobile Food Truck**

Lee's Catering (Lee's) provides a mobile food service at Ames for a fee of \$9,000.00 annually. The contractor has been providing services since April 1998. Until January 14, 2000, there was no signed agreement between Lee's and the Exchange. The intent to contract was signed by Len Ye of Lee's on January 14, 2000, and by the Operations Manager on January 27, 2000. The absence of a specific and signed agreement between the two parties may place the Exchange in jeopardy (e.g., adversely impacting the Exchange's ability to collect revenues from the vendor and disagreements concerning the scope and coverage of the vendor's business at Ames).

**Recommendation 4:** The Center Director should ensure that all Exchange contracts are properly and timely executed in compliance with the NPD 9050.6F, Section 5.2 requirement that the Exchange be operated in a business-like manner.

## **IV. RANDOLPH-SHEPPARD ACT**

Under the Randolph-Sheppard Act (RSA), 20 USC 107 et. seq., State rehabilitation agencies recruit, train, license, and place individuals who are blind as operators of vending facilities located on Federal and other properties. The Secretary of Education is responsible for promulgating regulations for and providing oversight of Federal agency compliance with the RSA. Further guidance is set forth in 34 CFR § 395.30, that each:

department, agency, or instrumentality of the United States in control of the maintenance, operation, protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation of blind licensees shall be located on all Federal property provided that the location or operation of

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<sup>13</sup> *Risks Associated with ARC's Acquisition of Military Family Housing* (IG-98-022), dated August 13, 1998 (See Appendix D for an executive summary). A full-text version of the audit is available on the NASA OIG web site at <http://www.hq.nasa.gov/office/oig/hq/ig-98-022.pdf>.

such facility or facilities would not adversely affect the interest of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

Federal agencies may be exempted from RSA based on justifications provided in writing and approved by the Secretary of Education.<sup>14</sup> Such exemptions are to be published in the Federal Register. Title 20 USC § 107d-1 also stipulates that the Secretary of Education shall convene a panel to arbitrate RSA disputes.<sup>15</sup>

The Ames Legal Counsel reviewed the Center's position on RSA and concluded that Ames was in compliance.<sup>16</sup> However, based on our review of the statutes, the Exchange has an obligation to pay a portion of the vending commission to the State of California.

Over the last 3 fiscal years, the Ames Exchange earned the following vending machine commissions:

<b>Year Ending</b>	<b>Commission Earned</b>
September 30, 1997	\$45,826.00
September 30, 1998	\$47,937.00
September 30, 1999	\$46,645.00

Under the RSA and implementing regulations, once vending income for a machine or group of machines exceeds the \$3,000 threshold, all profit income (including the first \$3,000) is subject to an assessment payable to the State Licensing Agency at a percentage rate (100 percent, 50 percent, or 30 percent) which is determined according to several factors. We believe that Ames should pay 50 percent of vending machine income exceeding the \$3,000 threshold to the State Licensing Agency under the terms of the RSA.<sup>17</sup>

However, the total commission earned is well above the \$3,000 total vending income limit that would qualify for an RSA exemption. Currently, the Exchange tracks each machine's income separately and reports no income subject to an assessment for RSA compliance.

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<sup>14</sup> See Title 20 USC § 107b-3.

<sup>15</sup> See Title 20 USC § 107d-1.

<sup>16</sup> Memorandum regarding Compliance with the Randolph-Sheppard Vending Stand Act, dated February 15, 2000 (See Appendix E).

<sup>17</sup> Title 20 USC § 107d-3(b)(1) states that after January 1, 1975, 50 percent of all vending machine income from vending machines on Federal property which are not in direct competition with a blind vending facility shall accrue as specified in subsection (a) of this section in the event there is no blind licensee operating such a facility on such property, to the State agency in whose state the Federal property is located. See also 34 CFR § 395.32.

**Recommendation 5:** The Center Director should ensure that the Center, including the Exchange, observes Department of Education regulations in implementing the RSA.

**Recommendation 6:** The Center should notify the State Licensing Agency and negotiate an appropriate agreement concerning its obligations under RSA and accurately report its vending income to NASA Headquarters accordingly.

## **SUMMARY AND EVALUATION OF NASA MANAGEMENT RESPONSE**

We received and evaluated NASA management's response to the draft report (See Appendix F). NASA management concurred with all six recommendations and provided planned actions that are responsive to the recommendations. We consider these six recommendations resolved pending verification of corrective action.

## **CONCLUSION**

NASA Exchanges operations were established to operate activities that contribute to the efficiency, welfare, and morale of all its employees. Management's implementation of the recommendations contained in this report will enhance Exchange oversight and strengthen management controls.

David M. Cushing

8 Enclosures:

Appendix A: Corrective Actions Taken by Ames Management in Response to Findings Made During the Inspection

Appendix B: NPD 9050.6F, *NASA Exchange Activities*, dated January 11, 2001

Appendix C: NPD 9050.4F, *Administrator's Fund*, dated March 2, 2000

Appendix D: *Risks Associated with ARC's Acquisition of Military Family Housing* (IG-98-022), dated August 13, 1998

Appendix E: Memorandum Regarding Compliance with the Randolph-Sheppard Vending Stand Act, dated February 15, 2000

Appendix F: NASA Management Response

Appendix G: Report Distribution

NASA Office of Inspector General Reader Survey

**MAJOR CONTRIBUTORS TO THIS REPORT**

Earl Baker, Associate Counsel to the Inspector General

Teresa Bryant, Audit Program Assistant

Mike McCarthy, Management Analyst

Phyllis Moses, Investigative Program Assistant

Patricia Stone, Director, Administrative Investigations (team leader)

Connia Webb, Auditor

# **Appendix A**

## **Corrective Actions Taken by Ames Management In Response to Findings Made During the Inspection**

## **FINDING 1**

### **Exchange Constitution and Bylaws**

NPD 9050.6E, paragraph 5.a (1), requires Center Directors to establish a constitution, bylaws, and regulations appropriate to Exchange management. The Ames Council established a formal constitution and bylaws for the Exchange in 1997; however, they could not provide a signed copy of this document. Various Council members remember signing the document and submitting it to the Ames Legal Office for review. The Legal Office did not have a record of the document. According to Council Members, the bylaws, as currently written, do not accurately reflect the present status of Exchange operations.

### **Recommendation**

The Center Director should ensure that a constitution, bylaws, and regulations are promulgated for the Ames Exchange. This guidance should be disseminated to the Council members and made available to all members of the Ames community.

### **Action Taken**

The constitution and bylaws were approved February 22, 2000. Effective January 11, 2001, NPD 9050.6F was updated and Section 5a.(2) requires the Center Director to establish policy and procedures appropriate to Exchange management.

## **FINDING 2**

### **Exchange Council Meetings and Minutes**

NPD 9050.6E, paragraph 5.c, states that minutes of Council meetings be kept on file. The Council members meet the first Tuesday of each month. Although the Council could provide formally documented meeting minutes for past years, recorded minutes for the most recent years were not available. The recording and filing of official minutes has become lax. Various Council members provided contemporaneous notes taken at the meetings and some minutes were provided from their personal files. Additionally, the independent certified audit firm contracted to audit the Exchange identified this lack of record keeping as a concern. The recorded minutes are the audit trail of officially approved actions. The lack of documented official minutes is a weakness in the control system. However, steps have not been taken to correct this deficiency.

### **Recommendation**

The Center Director and Exchange Council should ensure that minutes are recorded and maintained in an official Exchange file.

### **Action Taken**

Copies of minutes for the previous 14 months were provided to the OIG on March 29, 2001.

## **Appendix B**

**NPD 9050.6F, *NASA Exchange Activities*,  
dated January 11, 2001**



NASA  
POLICY  
DIRECTIVE

Directive: NPD 9050.6F  
Effective Date: January 11, 2001  
Expiration Date: January 11, 2006

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Responsible Office: J / Office of Management Systems

Subject: NASA Exchange Activities

1. POLICY

a. Exchanges are instrumentalities of the United States, with associated privileges, rights, and immunities. To ensure this status, Exchanges must be under NASA's control, and ownership interests must be with the Government. Therefore, all organizations using NASA or Exchange facilities shall be determined to be either an Exchange element (instrumentality) or independent. Instrumentalities shall be under Exchange control; independent organizations and their equipment and facilities shall be separated from and not controlled by the Exchange. Approval for use of NASA or NASA Exchange facilities by independent organizations shall be based upon activities proposed and the organization's ability to satisfy requirements such as insurance. Approval will not establish an independent organization as an instrumentality. Exchanges will not manage or supervise independent organizations.

b. Center Directors may establish at NASA Centers and Component Facilities under their jurisdiction a NASA Exchange and branches to operate activities contributing to the efficiency, welfare, and morale of NASA personnel. For this purpose, the Associate Administrator for Headquarters Operations, NASA Headquarters, has corresponding authority for Headquarters.

c. Exchanges may, by contract or otherwise, perform the following:

- (1) Operate food services.
- (2) Operate vending machines within Center buildings and grounds, to the extent that such operation is not inconsistent with law and regulations.
- (3) Promote activities, including clubs or recreation associations, contributing to the efficiency, welfare, and morale of NASA employees.
- (4) Use and acquire real property and facilities to achieve Exchange objectives (subject to subparagraphs g. and h.).
- (5) Sell goods and provide services approved by the Center Director, so long as they do not unduly compete with local merchants.

(6) Conduct other activities authorized by the Center Director with the prior concurrence of the Center Chief Counsel and the Center Public Affairs Officer, when activities involve the public and are clearly in NASA's and its employees' interests.

d. Exchanges shall sell goods or services at the lowest prices, consistent with operation costs and financial needs.

e. Participation in activities may include NASA employees and retirees, their family members and guests, Government contract employees, and official visitors.

f. Store privileges may be denied to a patron who resells purchased merchandise.

g. A Center Director may authorize use of NASA-controlled real property and existing facilities for Exchange activities, provided use does not interfere with official business.

h. Proposals for real property acquisition for Exchange activities by lease, purchase, or otherwise shall have the concurrence of the Center Director and Center Chief Counsel and be forwarded for concurrence by the Director, Facilities Engineering Division, NASA Headquarters, prior to approval by the Exchange Operations Manager. Proposed expenditures for new Exchange facilities or proposed expenditures in excess of \$50,000 for modification of existing Exchange facilities shall also be forwarded for concurrence by the Director, Facilities Engineering Division. The Exchange Operations Manager, with the Center Director's concurrence, may approve normal maintenance and repair of facilities or replacement of equipment.

i. Activities shall generally be supported by nonappropriated funds under the Exchange's sole jurisdiction. Center Directors may authorize use of appropriated funds where available, with the prior concurrence of the Center Chief Counsel and Chief Financial Officer. Examples of activities for which appropriated funds may be used include providing for cafeterias and other facilities, purchase and maintenance of cafeteria equipment necessary for Exchange activities, and audits of the Exchanges.

j. Exchange procurement of materials, supplies, or services with nonappropriated funds is not subject to procurement statutes and regulations applicable to NASA, except as made applicable by statute or regulation. As practicable, however, Exchange procurement practices shall conform to NASA's practices. In any case, Exchange procurement procedures should be documented and approved by the Center Director. All Exchange procurements and other acquisitions should be documented and retained in Exchange records.

k. Unless it would be inappropriate due to the nature of an Exchange contract, a clause shall be included in each Exchange contract stating that the contractor will indemnify and hold harmless the United States, its agents and instrumentalities (including the Exchange), and representatives, officers, and employees thereof, from any and all claims, demands, actions, debts, liabilities, judgements, and costs arising out of, claimed on account of, or in any manner predicated upon, the loss of or damage to

property, or injury to or death of any person(s), in any manner caused or contributed to by any action or omission of the contractor, its agents, representatives, or employees.

l. Concession contracts shall be competed and negotiated by the Exchange in general accordance with the Federal Acquisition Regulation (FAR) and NASA FAR Supplement, unless doing so would not be in the best interests of the Exchange. Center procurement staff shall assist in such procurements. The Center Chief Counsel shall concur and the Center Director shall approve the contract. A copy will be forwarded to the Office of Management Systems, NASA Headquarters.

m. Exchanges shall obtain liability insurance, as determined by the Exchange Council and Center Director. The United States shall be named as an additional insured.

n. Exchanges shall collect, pay, and report applicable Federal taxes. By authority of Congress, a State may impose and collect tax on sales made by an Exchange concessionaire located on a Federal area. A State may not levy and collect such a tax on sales made by the Exchange itself (4 U.S.C. Sections 105-107). Exchanges shall collect and pay State and local use and sales taxes only after determining applicability. Withholding and paying Federal and State income taxes on Exchange employees shall conform to policy applicable to appropriated fund employees of NASA at the same location. Exchange employees are subject to 5 U.S.C. 8501-8508, Unemployment Compensation.

o. If an Exchange is terminated, its assets become the property of the United States Government.

## 2. APPLICABILITY

This NPD is applicable to NASA Headquarters and NASA Centers, including Component Facilities.

## 3. AUTHORITY

42 U.S.C. 2473(c) Section 203(c) of the National Aeronautics and Space Act of 1958, as amended.

## 4. REFERENCES

- a. 28 U.S.C. 1346, 1491.
- b. 20 U.S.C. 107 et seq.
- c. 4 U.S.C. 105-107.

## 5. RESPONSIBILITY

- a. Center Directors are responsible for the following:

(1) Establishing policy and procedures appropriate to Exchange management.

(2) Operating the Exchange and its elements in a business-like manner.

(3) Authorizing Exchange use of NASA-controlled real property and facilities and submitting real property acquisitions and facility projects to NASA Headquarters, in accordance with paragraph 1.h.

(4) Ensuring that Exchanges observe Department of Education and cognizant State Licensing Agency regulations in implementing the Randolph-Sheppard Act Amendments of 1974, 20 U.S.C. 107 et seq. An annual report of activities must be completed and forwarded to the Office of Management Systems by January 15 of each year.

(5) Appointing an Exchange Council of no less than five Center employees and designating one member as Chairperson, one as Treasurer, and one as Exchange Operations Manager. A listing of the Council Members will be forwarded to the Office of Management Systems, NASA Headquarters.

b. The Exchange Operations Manager shall direct management of the Exchange within this policy and rules and recommendations of the Exchange Council as approved by the Center Director.

c. Exchange Council members perform their duties without compensation from the Exchange. No paid Exchange employee may be an Exchange Council member. The Exchange Council shall meet on a regular basis to review and approve activities of the Exchange and additionally as necessary at the Chairperson's discretion. Minutes of its meetings shall be kept on file. The Exchange Council shall perform the following:

(1) Promote Exchange objectives and determine the extent of Exchange support of welfare and morale activities.

(2) Ensure that operation of organizations established with its permission and under its control conforms with this NPD.

(3) Change policies, organizational structure, scope of activity, rules, or business practices, with the Center Director's approval. The Office of Management Systems, NASA Headquarters, will be advised of significant changes prior to their implementation.

(4) Establish a system of management controls that will provide reasonable assurance regarding the financial data, compliance with applicable laws and regulations, and prevention of, or prompt detection of, unauthorized acquisition, use, or disposition of exchange assets. Controls over assets include safeguards for the protection of the Exchange's property and supplies to prevent pilferage or unnecessary loss and periodic inventories.

(5) Review financial statements, activity budgets, and all other appropriate reports including those of the Office of Inspector General to ensure operation of a sound, business-like organization, and provide for an annual audit of books and records of the Exchange and its elements. Financial records will be maintained in accordance with generally accepted accounting principles promulgated by the American Institute of Certified

Public Accountants. Audits should be conducted by a licensed party, independent of NASA, in accordance with Government Auditing Standards (GAS) issued by the Comptroller General of the United States. In some of the smaller Exchanges, it may be appropriate to audit in compliance with the American Institute of Certified Public Accountants Standards for Accounting and Review Services. Such exceptions should be fully justified and approved in writing, in advance, by the Chief Financial Officer (CFO) and the Office of Management Systems at NASA Headquarters. Copies of consolidated September 30 Exchange balance sheet and income statement, with supporting financial statements for each element, and the annual audit report shall be submitted to the Center CFO by December 31.

(6) Submit an annual report on Exchange Council activities to the Center Director, including plans for the next fiscal year, within 90 days of fiscal year end. A copy of the annual report will also be forwarded to the Office of Management Systems and the Office of Financial Management, NASA Headquarters.

d. The Center CFO shall monitor Exchange adherence to this NPD and review financial statements and audit reports to ensure that the Exchange is financially sound and that responsible business practices are being followed.

e. The Center Chief Counsel, or for Headquarters, the Associate General Counsel (General Law) shall be responsible for providing guidance on legal and regulatory matters to the Exchange Council, including matters pertaining to the applicability of Government procurement statutes and regulations to Exchange procurements, and matters pertaining to the collection and payment by the Exchange of State and local use and sales taxes. See subsections 1.j. and 1.n. of this directive. Additionally, members of the Exchange Council and other Exchange officials will participate in the annual ethics briefing sessions. The appropriate NASA legal counsel shall also be responsible for concurring on concession contracts and on proposals for acquisition of real property for Exchange activities.

f. The Associate Administrator for Management Systems, or designee, shall be responsible for the following:

(1) Monitoring the Center's adherence to this directive through Sections 1.1, 5.a(5), 5.c(3), and 5.c(6) above and through periodic visits and reviews.

(2) Concurring on proposed exceptions to this directive.

(3) Issuing such supplemental guidelines and procedures as may be necessary to implement this directive.

g. The NASA Office of the CFO shall be responsible for the preparation and distribution of any required consolidated Agency financial reports, as well as oversight of related financial activities.

## 6. DELEGATION OF AUTHORITY

The authority to establish agency policy on Exchange activities is delegated to the Associate Administrator for Management Systems.

7. MEASUREMENTS

Exchanges will report on their activities and financial status as stated in paragraph 5.c (5).

8. CANCELLATION

NPD 9050.6E dated December 2, 1997

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/s/ Daniel S. Goldin  
Administrator

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ATTACHMENT A: (TEXT)

None.

(URL for Graphic)

None.

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## **Appendix C**

**NPD 9050.4F, Administrator's Fund,  
dated, March 2, 2000**

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Responsible Office: AI / Associate Deputy Administrator

Subject: Administrator's Fund

1. POLICY

a. The annual NASA authorization and appropriations acts allow a specified amount of NASA's appropriations to be used for official reception and representation expenses. The aggregate of such funds is identified as the Administrator's Fund.

b. It is NASA's policy to use the Administrator's Fund primarily to pay the expenses of non-NASA individuals attending official reception and representation activities sponsored by NASA. Under certain circumstances, as outlined in NPG 9050.xx, the Administrator's Fund may be also used for the expenses of NASA employees participating in representational events.

c. Official reception and representational activities are generally defined as events related to official Agency business and typically characterized by a mixed ceremonial, social, and/or business purpose. Expenses that may be covered by the Administrator's Fund include food, beverages, entertainment, and presentation items.

2. APPLICABILITY

This NPD is applicable to NASA Headquarters and NASA Centers, including Component Facilities.

3. AUTHORITY

42 U.S.C 2473(c)(1), Section 203(c)(1) of the National Aeronautics and Space Act of 1958, as amended.

4. REFERENCES

a. Annual Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act.

b. NPG 9050.xx



## 5. RESPONSIBILITY

- a. The Associate Deputy Administrator, or designee, is responsible for approving payment of expenses from the Administrator's Fund.
- b. The Officials-in-Charge of Headquarters Offices and Center Directors are responsible for requesting use of the Administrator's Fund in accordance with the procedures in NPG 9050.xx.
- c. The Associate Administrator for External Relations is responsible for reviewing and concurring in all requests for use of the Administrator's Fund involving foreign nationals.
- d. The Associate Administrator for Legislative Affairs is responsible for reviewing and concurring in all requests for use of the Administrator's Fund involving Congressional representatives or Congressional staff.
- e. The Associate Administrator for Public Affairs is responsible for reviewing and concurring in all requests for use of the Administrator's Fund involving the media and guest operations for launches.
- f. The Associate Administrator for Headquarters Operations is responsible for providing guidance, advice, and resolution of issues between requesting offices and the Assistant Executive Officer for the Office of the Administrator, Office of Headquarters Operations, that cannot be resolved otherwise.
- g. The General Counsel is responsible for reviewing requests for which the legal propriety of using the Administrator's Fund for the requested purpose is in question.
- h. The Headquarters Accounting Division (located at Goddard Space Flight Center) is the official repository for all official accounting and financial records for the Administrator's Fund.

## 6. DELEGATION OF AUTHORITY

Authority to approve requests for use of the Administrator's Fund is delegated to the Associate Deputy Administrator, with power for further delegation.

## 7. MEASUREMENTS

None.

## 8. CANCELLATION

NMI 9050.4E, dated May 19, 1994.

-----  
/s/ Daniel S. Goldin

Administrator

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ATTACHMENT A: (TEXT)

Government Forms

(URL for Graphic)

None.

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## **Appendix D**

***Risks Associated with ARC's Acquisition of Military Family  
Housing (IG-98-022), dated August 13, 1998***

# **RISKS ASSOCIATED WITH ARC'S ACQUISITION OF MILITARY FAMILY HOUSING IG-98-022**

## **Executive Summary**

### **Background**

Due to base realignment and closure decisions, Onizuka Air Station, California, is excessing 693 housing units near Ames Research Center (ARC). Some of this housing is immediately adjacent to ARC, and some is off-site about a half mile from ARC (see map in Appendix B). ARC plans to acquire the housing units for two reasons. First, ARC needs to maintain the adjacent housing as a noise buffer between the Center's wind tunnels and the surrounding community. Second, ARC management believes that the low-cost housing would both retain and attract military tenant organizations to defray the cost of maintaining and operating Moffett Federal Airfield (MFA). The ARC plan asserts that the housing operation adds no additional cost to ARC operations and was approved by NASA Headquarters.

### **Objectives**

The overall objective of the audit was to evaluate the operational and financial benefits of acquiring the Onizuka Air Station housing units. Specifically, we determined:

- whether acquiring the housing units will operationally benefit NASA or ARC,
- the estimated financial benefit to NASA of acquiring the housing units,
- and the legal and environmental issues that may affect the value of acquiring the housing units.

Additional details on the objectives, scope, and methodology are in Appendix A.

### **Results of Audit**

ARC management believes that the housing units can be acquired at no cost and little risk to NASA. However, a cost-benefit study performed for the Navy that supports ARC's assertion that housing revenue will at least equal the operating costs does not fully identify and consider all costs associated with the housing. In addition, ARC has not resolved all legal and environmental issues associated with the housing. As a result, the planned housing acquisition and operation could incur additional operational costs for ARC and increase liability for NASA. Leasing the

housing operation to a military resident agency is a key element of ARC's plan. The resident agency will accept responsibility for activities in the housing areas and contract with a commercial property management firm to operate the housing. As of April 1998, ARC had not yet identified a military resident agency for the housing operation.

## **Recommendations**

This report contains recommendations to help ARC:

- ensure that the proposed military family housing operation incurs no cost for NASA and involves no use of Agency personnel, and
- minimize NASA's exposure to potential tort and environmental liability from continuing the military family housing operation.

## **Management's Response**

Management concurred with all recommendations and will take actions to prevent the use of NASA resources to operate the military family housing and to minimize the Agency's exposure to tort and environmental liability. We consider planned actions responsive to the intent of the recommendations.

## **Appendix E**

**Memorandum Regarding Compliance with the Randolph-Sheppard Vending Stand Act, dated February 15, 2000**

[ Withheld per FOIA exemption 5, 5 U.S.S. §552 (b)(5). ]

# **Appendix F**

## **NASA Management Response**



National Aeronautics and  
Space Administration  
**Ames Research Center**  
Moffett Field, CA 94035-1000



Reply to Attn of: J:200-9

TO: NASA Headquarters  
Attn: W/Assistant Inspector General for Inspections, Administrative  
Investigations, and Assessments

FROM: Acting Director, Center Operations

SUBJECT: Ames Research Center Exchange Activities, G-00-003

In response to your May 31, 2001 Draft Report, our response to your recommendations is as follows:

**Recommendation 1:** The Center Director should ensure that appropriated funds are used to pay for official Agency expenditures.

**Concur.** Ames management will ensure that appropriated funds are used to pay for official Agency expenditures.

**Recommendation 2:** The Center Director should mandate that thorough reviews of Exchange-related Space Act Agreements are conducted to ensure that executed Space Act agreements comply with all applicable NASA directives, regulations, and Federal laws.

**Concur.** The Center will thoroughly review all Exchange-related agreements to ensure that the executed agreements comply with all applicable NASA directives, regulations and Federal laws.

**Recommendation 3:** The Center Director should continue to ensure that a thorough review of liability issues associated with the Exchange's involvement in the temporary lodging facilities is conducted and that appropriate measures are taken accordingly.

**Concur.** The Center Director will continue to ensure that the liability issues associated with the Exchange's involvement in the temporary lodging facilities are thoroughly reviewed and that appropriate measures are taken accordingly.

**Recommendation 4:** The Center Director should ensure that all Exchange contracts are properly and timely executed in compliance with the NPD 9050.6F, Section 5.2 requirement that the Exchange be operated in a business-like manner.

**Concur.** The Ames Chief Counsel will review all Exchange contracts prior to their execution and shall ensure that they are executed in a timely manner.

**Recommendation 5:** The Center Director should ensure that the Center, including the Exchange, observes Department of Education regulations in implementing the RSA.

**Concur.** The Ames Exchange, with the advice and guidance of the Ames Chief Counsel, will comply with "Randolph Sheppard" (20 U.S.C. 107 et seq.) and the implementing regulations (34 C.F.R. 395, "Vending Facility Program for the Blind on Federal and Other Property").

**Recommendation 6:** The Center Director should notify the State Licensing Agency and negotiate an appropriate agreement concerning its obligations under RSA and accurately report its vending income to NASA Headquarters accordingly.

**Concur.** The Ames Exchange, with the advice and guidance of the Ames Chief Counsel, will conduct a thorough review of the current status of vending income at Ames Research Center, along with its associated profits. The Exchange will then notify the appropriate California agency in order to negotiate a fair agreement concerning its RSA obligation. The California agency will be notified no later than October 31, 2001. NASA Headquarters will be informed of the Exchange's vending income and compliance with the RSA on an annual basis.

Should you have any questions regarding responses to any of the recommendations, please contact Katie Garcia at 650.604.5669 or email to [kgarcia@mail.arc.nasa.gov](mailto:kgarcia@mail.arc.nasa.gov)



Thomas J. Moyles

cc:  
JM/HQ/M.Team  
W/Pat Stone/JPL

# **Appendix G**

## **Report Distribution**

## **Distribution**

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L/Associate Administrator for Legislative Affairs  
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R/Associate Administrator for Aero-Space Technology  
NASA Exchange Chairpersons

### **NASA Advisory Official:**

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Deputy Associate Director, Energy and Science Division, Office of Management and Budget  
Budget Examiner, Energy Science Division, Office of Management and Budget  
Associate Director, National Security and International Affairs Division,  
General Accounting Office  
Professional Assistant, Senate Subcommittee on Science, Technology, and Space

### **Chairman and Ranking Minority Member of each of the following Congressional Committees and Subcommittees:**

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Senate Subcommittee on VA-HUD-Independent Agencies  
Senate Committee on Commerce, Science and Transportation

Senate Subcommittee on Science, Technology and Space  
Senate Committee on Governmental Affairs  
House Committee on Appropriations  
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### Report: Ames Research Center Exchange Activities, G-00-003

Please circle the appropriate rating for the following statements.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	N/A
1. The report was clear and readable	5	4	3	2	1	N/A
2. The report was logically organized	5	4	3	2	1	N/A
3. The report was concise and to the point	5	4	3	2	1	N/A
4. The facts were presented fairly and accurately	5	4	3	2	1	N/A
5. The report contained sufficient information to support the finding(s) in a balanced and objective manner	5	4	3	2	1	N/A
6. The recommendation(s) made sense and were relevant	5	4	3	2	1	N/A
7. The recommendation(s) were timely	5	4	3	2	1	N/A

***Overall, how would you rate the report?***

Excellent	Fair
Very Good	Poor
Good	

***How could we improve the report?*** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

***Are there steps we should have taken, but didn't?*** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

***Is there anything else we should have done differently?*** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*How did you use the report?* \_\_\_\_\_

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*Can you suggest any additional (related or unrelated) issues that the NASA Office of Inspector General should review? (You can also call our anonymous 24-hour Hotline at 1-800-424-9183)* \_\_\_\_\_

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*Additional comments* \_\_\_\_\_

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***Your occupation***

Congressional Staff

NASA Employee

Private Citizen

Government: Federal: \_\_\_\_\_ State: \_\_\_\_\_ Local: \_\_\_\_\_

Media

Public Interest

Other: \_\_\_\_\_

***May we contact you about your comments?***

**Yes:** \_\_\_\_\_

**No:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

Thank you for completing this survey.