NASA Policy Directive

NPD 9050.6I
Effective Date: December 09, 2009
Expiration Date: August 10, 2010

COMPLIANCE IS MANDATORY

Printable Format (PDF)

Request Notification of Change (NASA Only)

Subject: NASA Exchange and Morale Support Activities

Responsible Office: Logistics Management Division

1. POLICY

a. Exchange and Morale Support Activities (EMSA) are instrumentalities of the United States with associated privileges, rights, and immunities. To ensure this status, EMSAs must be under NASA's control, and ownership interests must be with the U.S. Government. Therefore, all organizations using EMSA facilities shall be determined to be either an EMSA element (instrumentality) or an independent organization. Instrumentalities shall be under EMSA control; independent organizations and their equipment shall be separated from and not controlled by the EMSA, and the organization or activity will not compete with or duplicate EMSA operations. Approval for use of NASA or NASA EMSA facilities by independent organizations shall be based upon activities proposed and the organizations' ability to satisfy requirements such as insurance. Approval for use will not establish an independent organization as an instrumentality. EMSA will not manage or supervise independent organizations. EMSA fund support shall not be provided to independent organizations, private groups, individuals, charities, or official mission-related activities such as retirement ceremonies, awards, protocol functions, or mission-related business luncheons, programs, or ceremonies.

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

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

(1) Operate businesses not limited to establishments such as food services, retail stores, social lounges, car washes, or salons.

(2) Operate vending machines within Center buildings and grounds, to the extent that such operation is consistent with laws and regulations.

(3) Promote, manage, and oversee morale support activities including, but not limited to, fitness centers, athletic leagues, social clubs, child development centers, and recreation associations contributing to the morale and welfare of NASA employees.

(4) Use and acquire real property and facilities to achieve EMSA objectives (subject to subparagraphs g. and h.).

(5) Sell goods and provide services approved by the Center Director, provided they do not unduly compete with local merchants.

(6) Conduct other activities, events, and programs that support the morale and welfare of the workforce, as 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. EMSAs shall sell goods or services at the lowest prices, consistent with operation costs and business and financial needs.

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

f. Exchange 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 EMSA operations, provided use does not interfere with official business or involve activities with the potential to release hazardous substances to the environment for which NASA as the real property owner is ultimately liable. Use of NASA-controlled real property and facilities for activities with the potential to release hazardous substances to the environment must be approved in advance by the appropriate Mission Associate Administrator, the NASA General Counsel, and the Associate Administrator for Institutions and Management.

h. Proposals for real property acquisition for EMSA activities by lease, purchase, or otherwise shall require the concurrence of the Center Director and Center Chief Counsel and be forwarded for concurrence by the Director, Facilities Engineering and Real Property Division, NASA Headquarters, prior to approval by the EMSA Operations Manager. Proposed expenditures for new EMSA facilities or proposed expenditures in excess of $50,000 for modification of existing EMSA facilities shall also be forwarded for concurrence by the Director, Facilities Engineering Division. The EMSA 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 EMSA's sole jurisdiction. Center Directors may authorize appropriated fund support for safety, health, and security requirements and equipment maintenance, repair, and replacement with the prior concurrence of the Center Chief Counsel and Chief Financial Officer. Examples of activities for which appropriated funds may be used include, but are not limited to, providing for cafeterias and other facilities, purchase and maintenance of equipment necessary for the EMSA, and audits of the EMSA.

j. EMSA 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 regulations. As practicable, however, EMSA procurement practices shall conform to NASA's practices. In any case, EMSA procurement

procedures shall be documented and approved by the Center Director. All procurements and other acquisitions shall be documented and retained as part of official EMSA records.

k. Unless it would be inappropriate due to the nature of an EMSA contract, a clause shall be included in each contract stating that the contractor will indemnify and hold harmless the United States, its agents and instrumentalities (including the EMSA), and representatives, officers, and employees thereof, from any and all claims, demands, actions, debts, liabilities, judgments, 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 EMSA 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 EMSA. 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 Institutions and Management, NASA Headquarters.

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

n. The EMSA shall collect, pay, and report applicable Federal taxes. By authority of Congress, a state may impose and collect tax on sales made by an EMSA concessionaire located on Federal property. A state may not levy and collect such a tax on sales made by the EMSA itself (4 U.S.C. sections 105-107). The EMSA shall collect and pay state and local use and sales taxes only after determining applicability. Withholding and paying Federal and state income taxes on EMSA employees shall conform to policy applicable to appropriated fund employees of NASA at the same location. EMSA employees are subject to 5 U.S.C. 8501-8508, Unemployment Compensation and 5 U.S.C. 8101-8193, Federal Employees Compensation Act.

o. If an EMSA is terminated, the successor in interest for nonappropriated assets will be other NASA EMSAs, and its appropriated 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. APPLICABLE DOCUMENTS

a. District Courts; Jurisdiction and Claims Against the U.S. Generally, 28 U.S.C. §§ 1346, 1491, as amended.

b. Vending Facilities for the Blind in Federal Buildings, 20 U.S.C. § 107, et seq., as amended.

c. Taxation Affecting Federal Areas, 4 U.S.C. §§ 105-107, as amended.

5. RESPONSIBILITY

a. Center Directors and the Assistant Administrator, Office of Infrastructure, Management, and Headquarters Operations are responsible for the following:

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

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

(3) Authorizing EMSAs' 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 EMSAs observe the 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 Infrastructure, Management, and Headquarters Operations by January 15 of each year.

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

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

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

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

(2) Ensure that the 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 Infrastructure, Management, and Headquarters Operations 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 EMSA assets. Controls over assets include safeguards for the protection of the EMSAs' 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 EMSA and its elements. Audit responses will comply with the requirements set forth in the Office of Management and Budget Circular A-50. Financial records will be maintained in accordance with generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants. Audits should be conducted by a licensed independent public accounting firm, in accordance with Government Auditing Standards (GAS) issued by the Comptroller General of the United States. In some of the smaller EMSAs, it may be appropriate to perform a review or compilation in accordance with 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 Office of the Chief Financial Officer (CFO) and the Office of Infrastructure, Management, and Headquarters Operations at NASA Headquarters. Copies of consolidated September 30 EMSA 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 EMSA Council activities to the Center Director, including a business plan for the next fiscal year, within 90 days of fiscal year end. A copy of the annual report and business plan will also be forwarded to the Office of Institutions and Management and the Office of the Chief Financial Officer, NASA Headquarters.

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

e. The Center Chief Counsel, or for Headquarters, the General Counsel, shall be responsible for providing guidance on legal and regulatory matters to the EMSA Council, including matters pertaining to the applicability of Government procurement statutes and regulations to EMSA procurements, and matters pertaining to the collection and payment by the EMSA of state and local use and sales taxes. See subsections 1.j. and 1.n. of this directive. Additionally, members of the EMSA Council and other EMSA 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 EMSA activities.

f. The Associate Administrator, Office of Infrastructure, Management, and Headquarters Operations, or designee, shall be responsible for the following:

(1) Monitoring the Centers' adherence to this directive through sections 1.l, 5.a(4), 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 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 for EMSAs is delegated to the Associate Administrator for the Office of Institutions and Management.

7. MEASUREMENTS/VERIFICATION

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

8. CANCELLATION

NPD 9050.6G, dated September 6, 2001.

/s/ Sean O'Keefe
Administrator

ATTACHMENT A: (TEXT)

None.

(URL for Graphic)

None.

DISTRIBUTION:
NODIS

This Document Is Uncontrolled When Printed.
Check the NASA Online Directives Information System (NODIS) Library
to Verify that this is the correct version before use: http://nodis3.gsfc.nasa.gov

---