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TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

VETERANS ADMINISTRATION

Effective upon publication in the FEDERAL REGISTER, paragraph (c) (1) of § 6.122 is revoked.

(R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 58-3950; Filed, May 26, 1958; 8:48 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter B—Loans, Purchases, and Other Operations

[1958 C. C. C. Cotton Bulletin 1]

PART 427—COTTON

SUBPART—1958 COTTON LOAN PROGRAM

This bulletin contains the regulations, instructions, and requirements with respect to the 1958 Cotton Loan Program of Commodity Credit Corporation (hereinafter referred to as CCC) formulated by CCC and the Commodity Stabilization Service (hereinafter referred to as CSS). Loans will be made available on upland and extra long staple cotton produced in 1958, in accordance with this bulletin.

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427.932 Schedule of premiums and discounts for upland cotton (basis 1-inch Middling).

AUTHORITY: §§ 427.901 to 427.932 issued under sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, as amended, 1054, as amended; 15 U. S. C. 714c, 7 U. S. C. 1441, 1421.

§ 427.901 *Administration.* Under the general direction and supervision of the Executive Vice President, CCC, the Cotton Division and other appropriate Divisions of CSS will carry out the provisions of this subpart. In the field, the program will be administered through the New Orleans CSS Commodity Office, 120 Marais Street, New Orleans 16, Louisiana (referred to in this subpart as the "New Orleans office"), and Agricultural Stabilization and Conservation (referred to in this subpart as "ASC") State and county committees (referred to in this subpart as State committees and county committees, respectively). Forms will be distributed by the New Orleans office and will be available at county ASC offices (referred to in this subpart as county offices) and at approved lending agencies, approved warehouses, and others designated to participate in the loan program. State and county committees and the New Orleans office do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements hereto.

§ 427.902 *Availability of loans*—(a) *Loans.* Loans will be available to eligible producers on eligible cotton and will be made available through warehouse, farm-stored, and bill of lading loans.

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

(b) *Area.* Loans on cotton covered by bills of lading will be available in areas specified by the New Orleans office. Warehouse and farm-stored loans will be available on:

(1) Upland cotton wherever produced in the continental United States.

(2) Extra long staple cotton produced in areas designated in this subparagraph.

(i) American-Egyptian cotton produced in Cochise, Graham, Greenlee, Maricopa, Mohave, Pima, Pinal, Santa Cruz, and Yuma Counties, Arizona; Imperial and Riverside Counties, California; Dona Ana, Eddy, Luna, Otero, and Sierra Counties, New Mexico; and Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, and Ward Counties, Texas, at the rates which will be issued at a later date.

(ii) Sea Island and Sealand cotton produced in Berrien, Cook, and Lanier Counties, Georgia; and Alachua, Bradford, Columbia, Hamilton, Jefferson, Lake, Levy, Madison, Marion, Orange, Putnam, Seminole, Sumter, Suwannee, Union, and Volusia Counties, Florida; and Sea Island cotton produced from seed planted in 1958 in Puerto Rico at the rates which will be issued at a later date.

(c) *Time.* Loans shall be available from the date rates are announced through April 30, 1959. Notes and chattel mortgages covering farm-stored cotton must be signed by the producer and delivered to the county office on or before April 30, 1959. Note and Loan Agreements covering warehouse-stored cotton must be signed by the producer and delivered to the lending agency on or be-

fore such date or postmarked not later than April 30, 1959, if tendered for direct loans to the New Orleans office by mail.

(d) *Source.* Loans will be available from approved lending agencies or from the New Orleans office. Disbursements on loans will be made to producers by approved lending agencies under agreements with CCC, or by the New Orleans office. Disbursement of loans by approved lending agencies will be made not later than April 30, 1959, except where specifically approved by the New Orleans office in each instance. The producer shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer shall promptly refund the proceeds.

§ 427.903 *Approved lending agency.* An approved lending agency shall be any bank, corporation, partnership, association, individual, or other legal entity which has entered into a Lending Agency Agreement—Cotton (CCC Cotton Form D) with CCC. Banks and other agencies desiring to enter into Lending Agency Agreements should make application to the New Orleans office, which will enter into such agreements on behalf of CCC.

§ 427.904 *Producer.* A producer shall be any individual, partnership, corporation, association, trust, estate, or other legal entity, or a State or political subdivision thereof, or an agency of such State or political subdivision, producing eligible upland or extra long staple cotton in the capacity of landowner, landlord, tenant or sharecropper.

§ 427.905 *Eligible producer.* A producer will be entitled to a loan on eligible upland or extra long staple cotton produced by or for him in 1958 on a farm (as defined for purposes of cotton marketing quotas) for which a 1958 acreage allotment for such kind of cotton has been determined under Title III of the Agricultural Adjustment Act of 1938, as amended and supplemented, if all of the following requirements are met:

(a) The 1958 planted acreage (as determined for purposes of cotton marketing quotas) of such kind of cotton on the farm does not exceed the 1958 cotton acreage allotment for the farm for such kind of cotton. For the purpose of determining eligibility for a loan, the upland or extra long staple cotton acreage on the farm will not be deemed to be in excess of the acreage allotment for such cotton unless such acreage allotment for such kind of cotton is knowingly exceeded. If the producer operating the farm is notified that such acreage allotment has been exceeded and the planted acreage is not adjusted to such acreage allotment within the period allowed under the notice, such acreage allotment shall be deemed to have been knowingly exceeded by the producers having an interest in the cotton.

(b) Where eligible cotton is produced by a landlord and his share tenant or sharecropper, a loan may be obtained only as follows:

(1) If the cotton is divided among the producers entitled to share in such cotton, each landlord, tenant, or sharecropper may obtain a loan on his separate share.

(2) If the cotton is not divided, (i) the landlord and one or more of the share tenants or sharecroppers may obtain a joint loan on their shares of such cotton, or (ii) the landlord may obtain a loan on cotton in which both he and one or more share tenants or sharecroppers have an interest if he has the legal right to do so, and in such cases the share tenants or sharecroppers must be paid their pro rata share of the loan proceeds and their pro rata share of any additional proceeds received from the cotton. In no case shall a share tenant or sharecropper obtain a loan individually on cotton in which a landlord has an interest.

§ 427.906 *Eligible cotton.* Eligible cotton shall be upland cotton produced in the United States in 1958 or extra long staple cotton planted in 1958 and produced in areas designated under § 427.902, which meets the following requirements:

(a) Such cotton must be of a grade and staple length specified in § 427.932.

(b) Such cotton must not be false-packed, water-packed, mixed-packed, reginned, or repacked; upland cotton must not have been reduced in grade or staple for any reason, except that any such cotton which is reduced not more than two grades because of preparation will be eligible; extra long staple cotton must have been ginned on a roller gin, shall be of normal character, and must not have been reduced in grade or staple for any reason.

(c) Such cotton must not be compressed to high density.

(d) Such cotton must have been produced by the person tendering it for a loan and such person must have the legal right to pledge or mortgage it as a security for a loan.

(e) Such cotton must not have been produced on any newly irrigated or drained land (unless such land was used for the production of cotton prior to May 28, 1956) within any Federal irrigation or drainage project (as defined in section 211 of the Agricultural Act of 1956) or on land reclaimed by a flood-control project unless such irrigation, drainage, or flood-control project was authorized prior to May 28, 1956. If such cotton was produced on land owned by the Federal Government, it must not have been produced in violation of the provisions of the lease.

(f) If the person tendering such cotton is a landlord or landowner, the cotton must not have been acquired by such landlord or landowner directly or indirectly from a share tenant or sharecropper and must not have been received in payment of fixed or standing rent; and if it was produced by him in the capacity of landlord, share tenant or sharecropper, it must be his separate share of the crop, unless he is a landlord and is tendering cotton in which both he and one or more share tenants or sharecroppers have an interest.

(g) The person or association tendering such cotton must not have previously sold and repurchased such cotton.

(h) Each bale of cotton must weigh not less than 350 nor more than 625 pounds, gross weight, and must be adequately packaged in new material manufactured for cotton bale covering, except used jute and sugar bagging will be acceptable if such bagging is clean and in sound condition. The bagging must be sufficiently strong to adequately protect the cotton. Cotton compressed to standard density, whether compressed by a warehouseman or at a gin, must have not less than eight bands. Heads of bales must be completely covered. Bales packaged with new bagging and ties used in the Cotton Experimental Bale Packaging Program sponsored by the National Cotton Council, Memphis, Tennessee (hereinafter referred to as "Experimental Bale Packaging Program") will be acceptable provided there is attached to each such bale a tag which identifies such bale with the program and which shows the actual tare weight and the number of pounds to be added to the gross weight of the bale for the purpose of adjusting the bale to the normal gross weight under such program.

§ 427.907 *Forms.* The following documents must be delivered by producers in connection with every loan except loans made pursuant to §§ 427.924 and 427.930.

(a) *Warehouse-stored loans.* (1) Cotton Producer's Note and Loan Agreement (CCC Cotton Form A, referred to in this subpart as "Form A").

(2) Warehouse receipts complying with the provisions of § 427.919.

(3) Producer's Letter of Transmittal (CCC Cotton Form B, referred to in this subpart as "Form B") if the loan is obtained direct from the New Orleans office.

(b) *Farm-stored loans.* (1) Cotton Producer's Note (CCC Cotton Form E, referred to in this subpart as "Form E").

(2) Cotton Chattel Mortgage (CCC Cotton Form F, referred to in this subpart as "Form F") and Cotton Mortgage Supplement (CCC Cotton Form FF, referred to in this subpart as "Form FF") covering the cotton tendered as security for a loan.

(3) Form B if the loan is obtained direct from the New Orleans office.

(c) *Cotton represented by order bills of lading.* (1) Form A executed within the area and during the period such loans are available.

(2) Order bill of lading in a form acceptable to CCC and representing the cotton tendered as security for the loan.

(3) If the Receiving Agency is not a warehouseman, Weight and Condition Certificates complying with the provisions of § 427.922 and a Receiving Agent's Certificate.

(4) Form B if the loan is obtained direct from the New Orleans office.

(d) *Loan documents executed by an administrator, executor or trustee.* Loan documents executed by an administrator, executor or trustee will be acceptable only where valid in law and must be accompanied by documentary evidence of the authority of the person executing the form or by a repurchase agreement of the lending agency. Copies of this agreement may be obtained from the New Orleans office. State documentary reve-

nue stamps shall be affixed to loan documents where required by law. A producer who desires to appoint an attorney-in-fact to act in his place and stead in obtaining loans shall use Power of Attorney (CCC Cotton Form 18) which must be filed with the New Orleans office.

§ 427.908 *Approved storage*—(a) *Warehouses.* Cotton will be accepted as security for loans only if stored by warehouses approved by CCC. Warehousemen desiring approval of their facilities should communicate with the New Orleans office. The names of approved warehouses may be obtained from the New Orleans office or State or county offices.

(b) *Farm storage.* Cotton in farm storage will be accepted as security for loans only if stored in a structure approved by the county committee for the county in which the cotton is stored. Such structures may be on or off the farm and must afford safe storage and protection against weather damage, poultry and livestock, and reasonable protection against fire and theft. If the producer does not own the premises where the cotton is stored and his lease on such premises expires prior to September 30, 1959, the owner of such premises must execute the Consent for Storage on the Cotton Mortgage Supplement. Any other tenant who has a right or interest in the premises must also execute the Consent for Storage.

§ 427.909 *Weight and rate.* (a) Loans will be made on the gross weight of upland cotton and on the net weight of extra long staple cotton. Notes covering cotton pledged on reweights will not be accepted if it is evident that such reweights reflect an increase in weight due to the absorption of additional moisture. In order to encourage improved wrapping methods and compensate for resulting reduced tare weight, in making loans on upland cotton wrapped with material under the Experimental Bale Packaging Program there will be added to the gross weight of the bale an allowance equal to the number of pounds shown by the program bale tag to be necessary "to adjust to normal gross weight" under such programs. No allowances other than those provided for in this subsection will be made.

(b) The base loan rate for upland cotton applicable at each approved warehouse will be shown in the Schedule of Base Loan Rates for Warehouse-Stored Upland Cotton.[1] The base loan rate under the farm-stored program for upland cotton for each county will be shown in the Schedule of Base Loan Rates by Counties for Farm-Stored Upland Cotton.[1] These schedules will be available at county offices. The premium or discount applicable to each eligible grade and staple length of upland cotton is shown in § 427.932. Loan rates for extra long staple cotton will be issued at a later date. After a loan is made, CCC will not be obligated to make adjustments in the amount of the loan as a result of any subsequent redetermination of the weight or quality of the cotton.

[1] Schedule to be issued about August 15, 1958.

§ 427.910 *Preparation of documents.* All applicable blanks on the loan forms must be filled in with ink, indelible pencil, or typewriter in the manner indicated therein, and documents containing additions, alternations, or erasures may be rejected by CCC. (Forms A having a date prior to June 3, 1955, shall not be used.) Both copies should be clearly legible. The spaces provided on Forms A and E for the producer to request and direct payment of the proceeds must be completed in every instance. All disbursements made from the proceeds of a note, including clerk's fee when deducted, must be shown and the total must agree with the amount of the note. In the case of warehouse-stored cotton, care should be exercised by the lending agency to determine that the warehouse receipts are genuine. No deduction may be made from the loan proceeds by the lending agency as a charge for handling the loan documents, except the authorized clerk's fee in case an employee of the lending agency has executed the Clerk's Certificate on Form A. Before the clerk prepares loan documents for a producer, he must determine that the producer is eligible for a loan. The county committee, in preparation of the producer's marketing card, will indicate the producer's eligibility. If the box following the word "Eligible" contains an "X" the clerk will use this as evidence that the producer is eligible for a loan and shall assist the producer in the preparation of his loan documents. If the box following the words "Ineligible Unless Loan Agreement Approved by County Committee" contains an "X" the clerk shall inform the producer that in order for him to obtain a loan he must have his loan documents prepared in the county office. If the box following the word "Ineligible" contains an "X", the producer cannot obtain a loan on such kind of cotton produced on that farm under any condition and should be so informed by the clerk. In the event that the marketing card indicates that the producer is eligible but shows evidence of any alteration or erasure, the clerk should not prepare the loan documents and should inform the producer that the documents will have to be prepared in the county office. Lending agencies which are also eligible producers must obtain direct loans on cotton produced by them from the New Orleans office or obtain loans from another approved lending agency.

(a) *Warehouse-stored cotton.* A producer desiring to obtain a loan on warehouse-stored cotton may obtain the necessary forms from county offices, approved lending agencies, approved warehouses, and approved clerks (persons approved by the county committees to assist producers in preparing and executing the loan forms). The Clerk's Certificate on each Form A tendered for a loan must be executed by an approved clerk, who will assist the producer in the preparation and execution of the Form A. The original of Form A must be signed by the producer and the copy marked producer's copy is to be retained by the producer. Loan forms must not be signed in blank. All applicable entries must be completed prior to the time the form is signed by the producer or the loan clerk. All of the cotton pledged as security for any loan must be of the same grade and staple length and must be stored in the same warehouse. Not more than 999 bales shall be pledged as security for any one note. Before preparing his loan documents, the producer should give careful consideration to the manner in which he may wish to withdraw the cotton from the loan. Cotton of the same grade and staple length will ordinarily be placed on the same note. However, it may be placed on separate notes if the producer believes it will facilitate the redemption of the cotton from the loan or the sale of his equity in such cotton.

(b) *Farm-stored cotton.* A producer desiring to obtain a loan on farm-stored cotton should communicate with the county office in the county in which the cotton is to be stored. It will be the responsibility of the county committee to arrange for the inspection of the storage structure and to approve it if it determines that it is of such construction as to afford adequate storage for the cotton. The county office will furnish and prepare the necessary documents for a farm-stored loan.

§ 427.911 *Service charges and deposits.* No service charges will be collected in connection with warehouse loans. A service charge of $1.00 per bale with a minimum of $3.00 per loan will be collected by the county office from the producer to cover services rendered in connection with farm-stored loans. State committees are authorized to require prepayment of $3.00 of the service charge. No refund of service charges will be made. A deposit of $1.00 per bale will also be collected from the producer to guarantee delivery of farm-stored cotton if the loan is not repaid by the producer. Such deposit will be returned if the loan is repaid or the cotton is delivered in accordance with delivery instruction issued by the county office. If the producer does not deliver the cotton upon demand by CCC, the county office will arrange delivery and retain the deposit. If delivery costs exceed the deposit, the producer will be liable for the difference.

§ 427.912 *Fees.* The clerk or county office employee assisting the producer in the preparation of the loan documents may collect a fee from the producer not to exceed the fees shown in the following schedules:

Number of bales on note:	*Maximum fee allowed*
1	25 cents.
2–6	25 cents plus 15 cents for each bale over 1.
7–18	$1 plus 10 cents for each bale over 6.
19 and over	$2.20 plus 5 cents for each bale over 18.

§ 427.913 *Liens.* Eligible cotton must be free and clear of all liens except the warehouseman's lien for charges permitted under § 427.921 on warehouse-stored cotton. The signatures of the holders of all existing liens on cotton tendered as security for a loan, such as landlords, laborers, or mortgagees (but not

the warehouseman, if the cotton is stored in a warehouse) must be obtained on the Lienholder's Waiver on each Form A and Form FF. If the producer tendering the cotton for loan is not the owner of the land on which the cotton was produced, all landowners and landlords must sign the Lienholder's Waiver whether or not they claim liens, unless they sign the note jointly with the producer. A fraudulent representation, as to prior liens or otherwise, will render the producer personally liable under the terms of the Loan Agreement and subject him to criminal prosecution under the provisions of the Commodity Credit Corporation Charter Act. The Lienholder's Waiver must be signed personally by all lienholders, by their agents (in which case duly executed Powers of Attorney (CCC Cotton Form 18) must be filed with the New Orleans office), or, if a corporation, by the designated officer thereof customarily authorized to execute such instruments (in which case no authority need be attached).

§ 427.914 *Set-offs.* If the producer is indebted to CCC on any accrued obligation, or if any installment or installments on any loan made available by CCC on farm-storage facilities or mobile drying equipment are past due or are payable or prepayable under the provisions of the note evidencing such loan, out of the proceeds of the price support loan, he must designate CCC or the lending agency holding such note as the payee of the proceeds of the loan to the extent of such indebtedness or installments, but not to exceed that portion of the proceeds remaining after deduction of service charges, clerks' fees, and amounts due prior lienholders. If the producer is indebted to any other agency of the United States and such indebtedness is listed on the county debt record, he must designate such agency as the payee of the proceeds as provided above. Indebtedness owing to CCC or to a lending agency as provided above shall be given first consideration after claims of prior lienholders. In any such case, the producer must go to the county office in the county in which he is listed on the debt record and have his loan documents completed by a clerk in the county office. A clerk in the county office will assist the producer in the preparation of such loan documents and will show in the space provided in the notes the agency to which the checks should be issued and the amount to be collected from the note. Compliance with the provisions of this section shall not constitute a waiver of any right of the producer to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

§ 427.915 *Classification of cotton.* (a) All cotton tendered for loan must be classed by a Board of Cotton Examiners of the United States Department of Agriculture (hereinafter referred to as the "Board") and tendered on the basis of such classification. A Cotton Classification Memorandum Form 1 of the United States Department of Agriculture will be accepted, provided the sample is a representative sample drawn in accordance with instructions to organized cotton improvement groups for sampling cotton under the 1958 Smith-Doxey Program. If the producer's cotton has not been sampled for a Form 1 classification, the warehouseman (for warehouse-stored cotton), receiving agency (for cotton covered by bills of lading), or county office (for farm-stored cotton), shall sample such cotton and forward the samples to the Board serving the district in which the cotton is located. A Cotton Classification Memorandum Form A3 must be inserted in each such sample. A Tag List and Record Sheet (CCC Cotton Form L, referred to in this subpart as "Form L"), must be prepared by the warehouseman, receiving agency, or county office, listing each sample included in a shipment to the Board. A copy of such Form L shall be included with the samples and the original and two copies must be mailed separately to the Board. The Board will enter the classification of each bale on the Form L and return a copy of such form to the warehouse, receiving agency or county office. The Cotton Classification Memorandum Form A3 will be returned to the producer by the Board. If a sample has been drawn and submitted for a Form 1 or Form A3 classification, another sample may not be drawn and forwarded to a Board except for a review classification. If through error or otherwise in any case where review classification is not involved two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value. If a Form 1 or Form A3 review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

(b) A charge of 25 cents per bale shall be collected from the producer by the warehouseman, receiving agency, or county office for all cotton for which samples are submitted to a Board for a Form A3 classification or a Form 1 or A3 review classification. The Boards will submit billings for classing charges to the warehousemen, receiving agencies, and county offices at the end of each month. Checks or money orders covering these charges shall be made payable to "Commodity Credit Corporation" and shall be sent to the New Orleans office.

§ 427.916 *Interest rate.* Loans and charges on the cotton covered by the loans shall bear interest at the rate of 3½ percent per annum from the date of disbursement to the date of repayment, except that in the case of farm-stored cotton, loans in default or obtained through fraud will bear interest at the rate of 6 percent per annum from the date of default or the date of disbursement, respectively.

§ 427.917 *Maturity.* (a) Loans mature July 31, 1959, or upon such earlier date as CCC may make demand for payment. If a producer does not repay his loan by maturity, CCC has the right to sell, purchase, or pool the cotton securing the loan in accordance with the provisions of the loan agreement. If the cotton is pooled, the producer will no longer have a right to redeem the cotton but will share ratably in any overplus remaining upon liquidation of the pool. CCC shall have the right to treat any pooled cotton as a reserve supply to be marketed under such sales policies as CCC determines will promote orderly marketing, protect the interests of producers and consumers, and not unduly impair the market for the current crop of cotton, even though part or all of such pooled cotton is disposed of under such policies at less than the current domestic price for such cotton.

(b) Any sum due the producer as a result of the sale or purchase of the cotton or collection of insurance proceeds therefrom, or his ratable share from a pool, shall be payable only to the producer or his personal representative without right of assignment to or substitution of any other person.

(c) If the producer does not repay his loan on farm-stored cotton on or before maturity, he is required to deliver the cotton in accordance with the provisions of Form FF, and if the cotton is not delivered by the producer, the holder of the note may enter on the premises where the cotton is stored and remove the cotton. Upon such delivery or removal, the holder may dispose of the cotton in accordance with the provisions of this section.

§ 427.918 *Safeguarding farm-stored cotton.* The producer obtaining a loan on farm-stored cotton is obligated to maintain the farm-storage structure in good repair and to keep the cotton in good condition. The producer will be responsible for any loss or damage occurring through the fault or negligence of the producer or as a result of any cause other than fire, flood, lightning, explosion, windstorm, cyclone, or tornado, except that he will not be responsible for loss in weight of not to exceed an average of 10 pounds per bale which is due to natural shrinkage. The maximum amount of cotton stored in any structure shall be limited to 200 bales, unless the State committee determines that a larger maximum is required to make the program more effective in the State. The conversion or unlawful disposition by the producer of any bale of the cotton will render him personally liable for the payment of the mortgage indebtedness.

§ 427.919 *Warehouse receipts and insurance.* Only negotiable warehouse receipts issued by an approved warehouse, properly assigned by an endorsement in blank so as to vest title in the holder or issued to bearer will be acceptable. The warehouse receipts must show that the cotton is covered by fire insurance and must be dated on or prior to the date of the producer's notes. Each receipt must set out in its written or printed terms a description by tag number and weight of the bale represented thereby and all other facts and statements required to be stated in the written or printed terms of a warehouse receipt under the provisions of section 2 of the Uniform Warehouse Receipts Act. Warehouse receipts issued prior to August 1, 1958, which by their terms will expire prior to August 1, 1959, must bear an endorsement of the warehouseman extending the terms of the warehouse receipts for a period

of one year from August 1, 1958. Block warehouse receipts will not be accepted except on cotton to be reconcentrated pursuant to § 427.923.

§ 427.920 *Insurance on farm-stored cotton.* CCC will not require the producer to insure cotton under farm-stored loan; however, if the producer does insure the cotton, and if an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the cotton involved in the loss.

§ 427.921 *Warehouse charges.* (a) The Agreement of Warehouseman on each Form A must be executed by the warehouseman storing the cotton covered by the Form A not more than 15 days preceding the date of the Producer's Note on the Form A and must not be executed subsequent to the date of the note. In the case of loans made to a cotton cooperative marketing association as provided in § 427.930, the Warehouseman's Certificate and Agreement on the Certificate of Association and Agreement of Warehouseman (CCC Cotton Form G–1, referred to in this subpart as "Form G–1") must be executed by the warehouseman storing the cotton covered by such form. By executing the Agreement of Warehouseman on the Form A or the Warehouseman's Certificate and Agreement on the Form G–1, the warehouseman agrees that such cotton will be stored and handled in accordance with the Warehouseman's Certificate and Agreement on the reverse side of the Form A or on the Form G–1 and makes the representations contained therein, and the warehouseman further agrees to store such cotton under conditions and at rates determined as follows:

(1) The cotton shall be insured against loss or damage by fire under a policy or policies providing coverage equivalent to that afforded under the standard fire policy of the State in which the cotton is stored for the full market value (if the cotton is compressed, its market value shall be the market value of flat cotton plus compression charges, or if the cotton is uncompressed and the warehouseman desires to collect his delivery charge for flat cotton in lieu of compression if it is destroyed by fire, such charge must be covered by insurance) at the time and place of loss and shall be kept so insured so long as the warehouse receipts therefor are outstanding, unless the cotton comes under a storage agreement between the warehouseman and CCC allowing the warehouseman to cancel his insurance on the cotton. Such insurance shall cover damage to the cotton by water from the warehouseman's sprinkler system when such damage results from fire in the same warehouse in which the cotton is stored. From the dates of the warehouse receipts representing the cotton or from the date through which the producer has paid storage charges, whichever is later, through July 31, 1959, all charges on the cotton for storage and insurance (as required in § 427.919) shall be at the rate of 46 cents per bale per month or fraction thereof for flat or compressed cotton stored in warehouses operating compress facilities or compressed cotton stored in warehouses not operating compress facilities, and at the rate of 51 cents per bale per month or fraction thereof for flat cotton stored in warehouses not operating compress facilities, or the warehouseman's established tariff on cotton other than CCC loan cotton, whichever is less. If the warehouse operates compress facilities, the tariff rate to which reference is made herein shall be the rate applicable to compressed cotton regardless of the compression status of the cotton. Such charges, accrued through July 31 of any year in which these rates are in effect, shall be paid by CCC, as soon as possible after such date, on all of the cotton represented by warehouse receipts held by CCC at the time of payment: *Provided*, That on any cotton for which CCC makes payment of accrued charges through July 31 of any year, payment for the fractional part of a month prior to such date shall be at the proportionate part of the monthly rate. The warehouseman may make a charge for outhandling, including picking out by tag numbers and loading according to custom into cars or trucks, of not to exceed 25 cents per bale if such charges are included in the warehouseman's tariff: *Provided*, That no such outhandling charge may be made where collection for the service has been included in any other charge or otherwise collected. Charges for compression of cotton by the warehouseman, including compression charges on cotton compressed to standard density by the warehouseman at his gin, will be at the rates provided in the warehouseman's established tariff in effect at the time the service is ordered performed. Compression charges on cotton compressed to standard density for the warehouseman at a gin or another warehouse under contract with the warehouseman will be at the rate which the warehouseman pays the ginner or the other warehouseman. In no event shall compression charges on gin compressed cotton or cotton compressed by another warehouseman exceed the rate paid to the ginner or the other warehouseman by his customers on all other cotton. Charges for the compression of cotton will be paid by CCC only if the charges have not been paid by the producer, and if the cotton is shipped from the warehouse by CCC. Compression charges on cotton not shipped by CCC will follow the cotton. All other charges on cotton including flat delivery charges on cotton moved from a warehouse operating compress facilities without payment of compression charges, will be at the rates provided in the warehouseman's established tariff in effect at the time the service is ordered performed: *Provided*, That no charge may be made with respect to the cotton that is not applicable to cotton other than CCC loan cotton stored by the warehouseman, except that the warehouseman may make a charge of not to exceed 25 cents per bale for transmitting samples to the designated classing office, postage, verifying and guaranteeing the correctness of the information for which the warehouse is responsible in the Schedule of Pledged Cotton on the Form A or Form G–1, and executing the Agreement of Warehouseman on the Form A or the Warehouseman's Certificate and Agreement on the Form G–1, if such charges are included in the warehouseman's tariff: *And provided further*, That in no event shall such charge, a service charge or charges for receiving, tagging, weighing, sampling on arrival, or storage of samples, be collected from CCC or a purchaser of the cotton. No charge for standard density compression or for delivery or outhandling, except as provided in this section, will be paid with respect to cotton received by the warehouseman which has been compressed to standard density either by a gin (gin compress bale) or by another warehouseman. No charge of any kind whatsoever will be paid with respect to any of the cotton compressed to high density without the written authority of CCC. The warehouseman shall execute and submit to CCC with each voucher for amounts payable by CCC under this agreement the following certificate:

I hereby certify that since the cotton covered by this voucher was received at the warehouse, there has been removed from such cotton only that amount of cotton necessary to secure representative samples, to properly trim the sample holes, or to otherwise maintain the cotton in the interest of good housekeeping and fire prevention incidental to the handling, storage, or compressing of said cotton except for reconditioning of damaged cotton, and that since issuance of warehouse receipts thereon such cotton has not been reconditioned, picked, or cleaned by blowing or brushing except as noted on report attached hereto or to a previous voucher covering such cotton; and that neither the warehouseman nor any officer or employee of the warehouseman has purchased or otherwise obtained any Producers' Equity Transfers on cotton stored in the warehouse which have not been presented to Commodity Credit Corporation within 15 days from the dates such transfers were executed by the producers.

The warehouseman shall store the cotton so that the tags will be visible and readily accessible so as to permit an accurate check of stocks at any time. In the event that the cotton is purchased or pooled by CCC or the loan on such cotton is extended or carried in past-due status by CCC after July 31, 1959, the rates quoted herein will remain in effect until terminated by CCC or the warehouseman at the end of any month by giving the other at least 30 days' notice, or until the cotton comes under another storage agreement between the warehouseman and CCC, whichever is earlier. If the cotton is redeemed from the loan or the cotton is sold by CCC, the charges provided in this section shall be applicable for services rendered up to and including the date of such redemption or sale, and the warehouseman shall not charge the holders of the warehouse receipts representing such cotton for such services an amount in excess of that

computed in accordance with this agreement. The terms and provisions of this section shall prevail over the written or printed terms of the warehouse receipts representing the cotton covered by the Form A.

(b) By executing the Agreement of Warehouseman on Forms A dated 6–3–55, the warehouseman certifies, in addition to the certifications contained in the Agreement of Warehouseman, that the heads of each bale of the cotton are completely covered with bagging.

§ 427.922 *Loans on order bills of lading.* (a) Loans on cotton represented by order bills of lading will be available only in areas specified by the New Orleans office where there is a shortage of storage space and where the necessary arrangements for handling the cotton may be made.

(b) Cotton represented by order bills of lading will be eligible for a loan only when it is shipped by an approved receiving agency as agent for the producer. Warehousemen, ginners, and other responsible parties in areas where such loans are available may be approved to act as receiving agencies by the New Orleans office. Receiving agencies will enter into Receiving Agency Agreements with CCC. When receiving agencies are approved, notifications will be given by letter or published lists.

(c) A producer who is unable to find storage space in his local area and who wishes to obtain such a loan should deliver his cotton to a receiving agency with the request that it ship the cotton as agent for the producer, in accordance with shipping instructions furnished by CCC, to a warehouse where storage space is available. The receiving agency will complete the Schedule of Pledged Cotton on a Form A and, if it is a warehouseman, will execute the Agreement of Warehouseman thereon. If the receiving agency is not a warehouseman, it will have the cotton weighed by a public or licensed weigher and will secure a Weight and Condition Certificate in the form prescribed by CCC and execute the Receiving Agent's Certificate. The receiving agency will ship the cotton, secure order bills of lading in a form acceptable to CCC, and deliver to the producer the bills of lading, together with the Form A and Weight and Condition Certificates (if any). If the receiving agency is a warehouseman, it will be permitted to collect fees in accordance with § 427.921 and a fee of not to exceed 10 cents per bale to cover the costs of preparation of shipping documents. If the receiving agency is not a warehouseman, it will, for the purpose of payment of gin compression only be considered as a warehouseman and will be permitted to collect from CCC charges for gin compression as provided in § 427.921 and will be permitted to collect from producers a fee not in excess of the fee set forth in the Receiving Agency Agreement executed by the receiving agency, and shall post, in a conspicuous place, a notice showing the fee to be charged producers. Loans will be made at the full loan rate at the point where the receiving agency receives the cotton. CCC will pay warehouse storage charges on cotton tendered by the producer for a loan under this section, if the receiving agency is a warehouseman.

§ 427.923 *Loans on cotton to be reconcentrated.* Loans on cotton to be reconcentrated will be available only on cotton stored at warehouses approved by the New Orleans office in areas where there is congestion and lack of storage space. The warehousemen will enter into Reconcentration Agreements (CCC Cotton Form 29, referred to in this subpart as "Reconcentration Agreements") with CCC. Warehouse receipts covering cotton to be reconcentrated under a Reconcentration Agreement must be in a form acceptable to CCC and must provide for delivery of the cotton to the order of CCC. Block warehouse receipts covering cotton to be reconcentrated under a Reconcentration Agreement will be accepted. A producer who desires to obtain a loan in this manner should request the warehouseman to issue a warehouse receipt to him in the form specified above and must furnish written authorization to the warehouseman for the reconcentration of his cotton after which the warehouseman will ship the cotton. The Forms A and warehouse receipts covering cotton to be reconcentrated under a Reconcentration Agreement must show the reconcentration order number under which the cotton will be shipped. The producer will obtain a loan on these documents in the usual manner, and after receipt of the loan documents, CCC will surrender the warehouse receipts to the warehouseman.

§ 427.924 *Advance loans.* (a) If a producer desires to obtain a loan under this part on cotton stored or to be stored in a warehouse, prior to the receipt of the classification of such cotton by a Board of Cotton Examiners or prior to the issuance of a warehouse receipt representing the cotton, and if the producer desires to obtain interim financing from a lending agency until such time as a CCC loan may be obtained, the lending agency may make the producer a private loan (called "the advance loan" in this subpart) on such cotton on forms and in amounts agreed upon between the lending agency and the producer and may obtain from the producer a duly executed Producer's Power of Attorney (CCC Cotton Form J, referred to in this subpart as "Form J") in triplicate authorizing and directing the lending agency to prepare or cause to be prepared and execute on behalf of and in the name of the producer Forms A covering all such cotton which is eligible for a loan under this part. The duplicate copy shall be delivered to the producer. On or before the date the advance loan is made, samples must have been drawn from the cotton and submitted to a Board of Cotton Examiners for classification or, if the cotton has not arrived at the warehouse, the warehouseman must have been instructed to sample the cotton and forward the samples for classification upon receipt of the cotton at the warehouse. On or before September 1, 1958, or within 15 days after the dates of the classification certificates, or within 15 days after the dates of the warehouse receipts, whichever is later, the lending agency shall (as provided in Form J), unless the cotton is redeemed by the producer, prepare or cause to be prepared and execute on behalf of the producer Forms A covering all such cotton which is eligible for a loan and make a CCC loan or loans to the producer under this part. The lending agency shall promptly remit to the producer any difference between the amount due on the advance loan and the proceeds of the CCC loan, less any applicable charges under this part paid by the lending agency on behalf of the producer. The producer's copies of Forms A and the canceled note evidencing the advance loan shall be forwarded to the producer. The original of Form J shall be transmitted with the notes when they are tendered to CCC.

(b) It shall be the joint responsibility of the lending agency named in the Form J to obtain the official classification from the producer or the warehouseman and of the producer to deliver the official classification to such lending agency, within 15 days from the date of the classification certificate so that the Form A loans can be made within the specified time.

(c) It shall be the responsibility of the lending agency named in the Form J to obtain the execution of the Agreement of Warehouseman and the Clerk's Certificate on the Form A. Only bona fide employees of lending agencies making the advance loans who are approved as clerks by the county committee or approved clerks in the county office, will be permitted to execute the Clerk's Certificate on Forms A covering cotton on which advance loans have been made.

§ 427.925 *Loans on upland cotton prior to August 1, 1958.* Loans on upland cotton will be made available to producers in the area where such cotton is harvested prior to August 1, 1958. Base loan rates for warehouse locations in the early harvesting area will be announced by the New Orleans office prior to harvest. The premium or discount applicable to each eligible grade and staple length is shown in § 427.932. Other provisions for loans prior to August 1, 1958, will be the same as provided for loans after that date, except that in the event that the base loan rate based on the August 1, 1958, parity price for upland cotton is in excess of the base loan rate announced prior to such date, the difference will be paid to the producer upon his application to the New Orleans office. If application is not made for the difference and if the loan is not repaid, the difference will be paid upon maturity of the loans.

§ 427.926 *Tender of notes by lending agencies.* Notes (Forms A and Forms E) evidencing loans made by a lending agency which has entered into a Lending Agency Agreement—Cotton (CCC Cot-

ton Form D) prior to the making of the loans will be eligible for purchase or pooling by CCC. Under this agreement, lending agencies which are parties thereto are required to tender to CCC, on Lending Agency's Letter of Transmittal (CCC Cotton Form C, referred to in this subpart as "Form C"), all notes on Form A and Form E, with warehouse receipts, bills of lading (and weight and condition certificates, if required), or cotton chattel mortgages attached, representing loans made by the lending agency within 15 days after the date of disbursement of the loans. All notes transmitted on a Form C must cover cotton stored in warehouses in the same custodial district. Separate Forms C shall be used for upland and extra long staple cotton. Notes secured by warehouse receipts, by bills of lading, or by chattel mortgages, and notes executed by attorneys-in-fact, must be transmitted on separate Forms C. Each Form C shall state whether the lending agency desires CCC to purchase the notes or to place them in a pool. Upon receipt of the loan papers by the New Orleans office, they will be examined and, if found correct, will be approved and transmited to the custodial office serving the district in which the cotton is stored, and will be purchased or placed in a pool as directed by the lending agency. Lending agencies which have previously been approved by CCC as eligible to draw drafts on CCC may, subject to such instructions and requirements as CCC may hereafter from time to time prescribe, obtain immediate payment for notes they desire to sell to CCC, by drawing sight drafts with enclosed letters of transmittal on CCC through a Federal Reserve Bank or Branch Bank approved by CCC. Notes covered by such drafts must be immediately submitted to the New Orleans office. In the event that the notes are pooled, a Certificate of Interest representing the interest in the pool acquired as the result of the deposit therein of the notes shown on the Form C will be issued to any approved lending agency designated on the Form C.

§ 427.927 *Loss or damage to pledged cotton.* In any case where there is loss or damage to cotton which occurs while such cotton is pledged to CCC or a lending agency, CCC shall have the right to determine and file claims against any liable third parties for the resulting loss. Upon determination of the quantity of the lost or damaged cotton, CCC will give credit for the loan value (including charges and interest) of such cotton. If the proceeds of the claim exceed the loan value of such cotton, the excess proceeds shall be remitted to the producer or, if the loan has been repaid, to the party repaying the loan.

§ 427.928 *Transfer of producer's interest.* If the producer desires to sell his equity in the cotton covered by a note, he must complete the Producer's Equity Transfer Agreement in the Producer's Equity Transfer on the reverse side of the Producer's Loan Statement—A, which will be mailed to the producer by the New Orleans office at the time the notes are processed by that office. The producer must sign the Producer's Equity Transfer Agreement in the presence of a witness approved for such purpose by a county committee and the Certificate of Witness in the Producer's Equity Transfer must be dated and signed by the witness. An approved witness shall not witness an equity transfer if he, or the firm by which he is employed, is the purchaser. A producer who desires to appoint an attorney-in-fact to act in his place and stead in selling his equity in the cotton shall use Power of Attorney (CCC Cotton Form 19) and file it with the applicable custodial office. The equity purchaser must complete the Certificate of Purchaser in the Producer's Equity Transfer and send it within 15 days to CCC, in care of the custodial office serving the district in which the cotton was stored at the time the loan was obtained. Upon receipt of the Producer's Equity Transfer, the custodial office will forward the note and warehouse receipts to a bank designated by the person requesting their release with directions to the bank to release the note and warehouse receipts to the holder of the equity transfer upon payment of the amount due on the loan. In all such cases, the bank will be instructed to return the note and warehouse receipts to the custodial office if payment is not effected within 5 business days. All charges assessed by the bank to which the note and warehouse receipts are sent must be paid by the person requesting the release of the cotton. No partial release of the cotton securing one note will be permitted except that CCC may allow partial releases in cases where loss or damage to part of the cotton occurs. In the event the Producer's Loan Statement—A is destroyed or lost, the producer may obtain a duplicate of such form from the custodial office serving the district in which the cotton is stored.

§ 427.929 *Repayments by producer—*(a) *Warehouse-stored cotton.* If a producer desires to obtain the return of his note and the release of the cotton securing the note, he must execute the Producer's Redemption Request on the Producer's Loan Statement—A which will be mailed to the producer by the New Orleans office at the time the notes are processed by that office. The producer must send or deliver the Producer's Loan Statement—A to CCC, in care of the custodial office serving the district in which the cotton was stored when the loan was obtained, as shown in § 427.931. Upon receipt of the Producer's Redemption Request, the custodial office will forward the note and warehouse receipts to a bank designated by the producer with directions to the bank to release such note and warehouse receipts only to the producer or his authorized agent upon payment of the amount due on the loan. The bank will be instructed to return the note and warehouse receipts to the custodial office if payment is not effected within 15 days. All charges assessed by the bank must be paid by the producer. A producer who desires to appoint an attorney-in-fact to act in his place and stead in repaying loans shall use Power of Attorney (CCC Cotton Form 19) and file it with the applicable custodial office. No partial release of the cotton represented by warehouse receipts and securing a note will be permitted, except that CCC may allow partial releases in cases where loss or damage to part of the cotton occurs.

(b) *Farm-stored cotton.* If the producer desires to repay his loan and obtain the release of the cotton securing the note, he may obtain complete instruction from the county office of the county in which the cotton is stored. Partial releases will be allowed.

§ 427.930 *Cotton cooperative marketing association loans.* A special form of loan agreement will be made available to cotton cooperative marketing associations whereby members of such associations may act collectively in obtaining loans. The loan rates under this agreement will be the same as the loan rates to individual producers, and eligibility requirements with respect to the cotton and the producers tendering the cotton to the association and other loan provisions will be substantially the same as for loans to individual producers. Members desiring to obtain loans from their associations should contact their associations.

§ 427.931 *Custodial offices.* The custodial offices referred to in this subpart and the district served by each are shown below:

(a) *Warehouse-stored cotton.* Custodial Office and District Served:

Federal Reserve Bank, Atlanta, Ga.: Georgia, Alabama, Florida, Virginia, North Carolina, South Carolina.

Federal Reserve Bank, Dallas, Tex.: New Mexico, Texas.

Federal Reserve Bank, Los Angeles, Calif.: California, Arizona, Nevada.

Federal Reserve Bank, Memphis, Tenn.: Illinois, Kentucky, Arkansas, Missouri, Tennessee, and the following counties in Mississippi: Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, Yalobusha.

New Orleans CSS Commodity Office. Louisiana and counties in Mississippi not assigned to Memphis.

Federal Reserve Bank, Oklahoma City, Okla.: Oklahoma, Kansas.

(b) *Farm-stored cotton.* Custodial Office and District Served:

New Orleans CSS Commodity Office: All States.

§ 427.932 *Schedule of premiums and discounts for eligible qualities of 1958-crop American upland cotton (basis 1-inch Middling).*

Grade	Staple length (inches)													
	15/16	7/8	29/32	13/16	25/32	1	1 1/32	1 1/16	1 3/32	1 1/8	1 5/32	1 3/16	1 7/32	1 1/4 & Longer
WHITE														
Good Middling and Better	Points −425	Points −315	Points −210	Points −65	Points 5	Points 100	Points 195	Points 300	Points 355	Points 415	Points 495	Points 560	Points 725	Points 875
Strict Middling	−440	−325	−225	−80	−15	85	175	280	340	395	475	570	710	855
Middling	−495	−385	−280	−145	−80	Base	85	175	235	295	380	480	620	765
Strict Low Middling	−840	−740	−655	−530	−490	−380	−305	−255	−220	−185	−140	−75	−20	45
Low Middling	−1,135	−1,045	−970	−875	−815	−760	−710	−680	−665	−650	−640	−625	−615	−600
Strict Good Ordinary	−1,380	−1,315	−1,255	−1,175	−1,115	−1,070	−1,040	−1,025	−1,025	−1,025	−1,025	−1,025	−1,025	−1,025
Good Ordinary	−1,605	−1,540	−1,480	−1,410	−1,360	−1,325	−1,305	−1,295	−1,295	−1,295	−1,295	−1,295	−1,295	−1,295
SPOTTED														
Good Middling	−870	−770	−670	−595	−505	−430	−375	−335	−290	−250	−200	−155	−115	−80
Strict Middling	−890	−790	−690	−585	−525	−455	−395	−355	−315	−275	−225	−185	−145	−110
Middling	−1,155	−1,050	−970	−875	−805	−725	−670	−640	−600	−565	−515	−480	−445	−420
Strict Low Middling	−1,385	−1,315	−1,245	−1,165	−1,110	−1,045	−1,020	−1,005	−1,000	−1,000	−1,000	−1,000	−1,000	−1,000
Low Middling	−1,645	−1,575	−1,510	−1,435	−1,395	−1,350	−1,325	−1,315	−1,310	−1,310	−1,310	−1,310	−1,310	−1,310
TINGED														
Good Middling	−1,260	−1,175	−1,110	−1,030	−995	−955	−940	−930	−915	−900	−890	−880	−870	−855
Strict Middling	−1,295	−1,205	−1,140	−1,065	−1,030	−985	−970	−960	−950	−935	−920	−910	−900	−890
Middling	−1,500	−1,415	−1,355	−1,290	−1,255	−1,220	−1,205	−1,200	−1,200	−1,200	−1,200	−1,200	−1,200	−1,200
Strict Low Middling	−1,705	−1,630	−1,570	−1,505	−1,470	−1,435	−1,425	−1,420	−1,420	−1,420	−1,420	−1,420	−1,420	−1,420
Low Middling	−1,920	−1,845	−1,775	−1,705	−1,670	−1,640	−1,630	−1,625	−1,625	−1,625	−1,625	−1,625	−1,625	−1,625
YELLOW STAINED														
Good Middling	−1,350	−1,470	−1,390	−1,330	−1,295	−1,265	−1,245	−1,240	−1,240	−1,240	−1,240	−1,240	−1,240	−1,240
Strict Middling	−1,575	−1,495	−1,415	−1,360	−1,325	−1,295	−1,280	−1,275	−1,275	−1,275	−1,275	−1,275	−1,275	−1,275
Middling	−1,765	−1,685	−1,610	−1,540	−1,510	−1,470	−1,460	−1,455	−1,455	−1,455	−1,455	−1,455	−1,455	−1,455
GRAY														
Good Middling	−840	−735	−655	−535	−480	−400	−335	−295	−265	−235	−195	−140	−85	−15
Strict Middling	−920	−815	−730	−615	−565	−495	−440	−400	−370	−350	−310	−265	−215	−170
Middling	−1,150	−1,050	−975	−885	−830	−760	−710	−680	−660	−640	−615	−585	−560	−530
Strict Low Middling	−1,365	−1,270	−1,205	−1,120	−1,070	−1,005	−970	−945	−945	−945	−945	−945	−945	−945

Issued this 22d day of May 1958.

[SEAL] CLARENCE L. MILLER,
Acting Executive Vice President, Commodity Credit Corporation.

[F. R. Doc. 58-3956; Filed, May 26, 1958; 8:50 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Valencia Orange Reg. 137]

PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 922.437 *Valencia Orange Regulation 137*—(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said marketing agreement and order, as amended, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on May 22, 1958.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., May 25, 1958, and ending at 12:01 a. m., P. s. t., June 1, 1958, are hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 554,400 cartons;

(iii) District 3: Unlimited movement.

(2) All Valencia oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said marketing agreement and order, as amended.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: May 23, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-3985; Filed, May 23, 1958; 1:06 p. m.]

[Cherry Order 2]

PART 1022—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

LIMITATION OF SHIPMENTS

§ 1022.302 *Cherry Order 2*—(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 122 (7 CFR Part 1022; 22 F. R. 3835), regulating the handling of sweet cherries grown in designated counties in Washington, effective June 1, 1957, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the Washington Cherry Marketing Committee, established under the aforesaid marketing agreement and order, and upon other

available information, it is hereby found that the limitation of shipments of cherries, in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that, as hereinafter set forth, the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than June 1, 1958. A reasonable determination as to the supply of, and the demand for, cherries must await the development of the crop and adequate information thereon was not available to the Washington Cherry Marketing Committee until May 14, 1958; recommendation as to the need for, and the extent of regulation of, shipments of such cherries was made at the meeting of said committee on May 14, 1958, after consideration of all available information relative to the supply and demand conditions for such cherries, at which time the recommendation and supporting information were submitted to the Department; necessary supplemental data for consideration in connection with the specification of the provisions of this regulation were not available until May 20, 1958; shipments of the current crop of such cherries will begin on or about June 1, 1958, and this regulation should be applicable, insofar as practicable, to all shipments of such cherries in order to effectuate the declared policy of the act; and compliance with the provisions of this regulation will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., P. s. t., June 1, 1958, and ending at 12:01 a. m., P. s. t., September 1, 1958, no handler shall handle:

(i) Any cherries unless such cherries grade at least U. S. No. 1 with an additional tolerance of 15 percent for defects, of which not more than one-third (5 percent) shall be allowed for defects, other than decay, causing serious damage;

(ii) Except as otherwise provided in this section, any cherries, unless such cherries measure at least $^{48}/_{64}$ inch in diameter;

(iii) Any cherries in faced packs unless such cherries measure at least $^{54}/_{64}$ inch in diameter; or

(iv) Any cherries in any pack other than faced packs in any container having a capacity equal to or greater than that of a container with inside dimensions of $15\frac{1}{8}$ by $10\frac{1}{2}$ by $3^{15}/_{16}$ inches, unless the net weight of the cherries in such container is not less than 20 pounds, and such cherries measure at least $^{54}/_{64}$ inch in diameter.

(2) Notwithstanding the provisions of subparagraph (1) (ii) through (iv) of this paragraph up to 10 percent, by count, of the cherries in any lot may fail to meet the applicable specified minimum diameter requirement.

(3) Notwithstanding any other provisions of this regulation, any individual shipment of cherries which, in the aggregate, does not exceed 100 pounds, net weight, may be handled without regard to the restrictions specified in this paragraph or in § 1022.41 or § 1022.55.

(c) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as given to the respective term in said marketing agreement and order; "U. S. No. 1," "defects," "serious damage," and "diameter" shall have the same meaning as when used in the United States Standards for Sweet Cherries (§§ 51.2646–51.2657 of this title); and "faced pack" means that the cherries in the top layer in any container are so placed that the stem ends are pointing downward toward the bottom of the container.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: May 22, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. D. Doc. 58-3954; Filed, May 26, 1958; 8:49 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 54597]

PART 1—CUSTOMS DISTRICTS, PORTS, AND STATIONS

EXTENSION OF LIMITS OF CUSTOMS PORT OF GREEN BAY, WIS.

MAY 20, 1958.

By virtue of the authority vested in the President by section 1 of the act of August 1, 1914, 38 Stat. 623 (19 U. S. C. 2), which was delegated to the Secretary of the Treasury by the President by Executive Order No. 10289, September 17, 1951 (3 CFR, 1951 Supp., Ch. II), the limits of the customs port of entry of Green Bay, Wisconsin, in Customs Collection District No. 37 (Wisconsin), comprising the territory within the corporate limits of that city, are hereby extended to include the territory within the townships of Ashwaubenon, Allouez, Preble and Howard, and the city of De Pere, all in the State of Wisconsin, effective on the date of publication of this Treasury decision in the FEDERAL REGISTER.

Section 1.1 (c), Customs Regulations, is amended by deleting the period after "Green Bay" in the column headed "Ports of entry" in District No. 37 (Wisconsin), and by adding "(including the townships of Ashwaubenon, Allouez, Preble, and Howard, and the city of De Pere) (T. D. 54597)."

(R. S. 161, sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 5 U. S. C. 22, 19 U. S. C. 1, 2)

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F. R. Doc. 58-3951; Filed, May 26, 1958; 8:49 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 1638]

[Nevada 013137, 014602]

NEVADA

WITHDRAWING PUBLIC LANDS FOR USE OF THE DEPARTMENT OF THE ARMY FOR MILITARY PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Nevada are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws but not the act of July 31, 1947 (61 Stat. 681; 69 Stat. 367; 30 U. S. C. 601–604) as amended, and reserved for use of the Department of the Army in connection with the Lake Mead Base:

MT. DIABLO MERIDIAN

T. 19 S., R. 62 E.,
Sec. 25, S½;
Sec. 36, W½.
T. 20 S., R. 62 E.,
Sec. 1, lots 3 and 4.
T. 19 S., R. 63 E.,
Sec. 27, SW¼;
Sec. 30, SW¼.

The areas described aggregate 997.95 acres.

No disposal of the surface and subsurface resources, including mineral resources, of the lands, shall be made except under the applicable public land laws, and then only after such modification of the provisions of this order, with concurrence of the Department of the Army, as may be necessary to permit such disposal.

ROGER ERNST,
Assistant Secretary of the Interior.

MAY 21, 1958.

[F. R. Doc. 58-3932; Filed, May 26, 1958; 8:45 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

Subchapter A—Armed Services Procurement Regulations

[Amdt. 28]

MISCELLANEOUS AMENDMENTS

The following miscellaneous amendments are made to this subchapter:

PART 1—GENERAL PROVISIONS

SUBPART B—DEFINITION OF TERMS

Section 1.201–9 has been revised to reflect the DoD policy that findings of the Secretary of Labor with respect to a firm found ineligible as a "manufacturer" or "regular dealer," be extended to transactions of $10,000 or less.

§ 1.201 *Definitions.* * * *

§ 1.201–9 *Sources of supplies.* (a) *"Sources of supplies"* shall include only (i) manufacturers, (ii) construction contractors, and (iii) regular dealers in the supplies to be procured. A "regular dealer" shall be deemed to be any one of the following:

(1) A person or firm who owns, operates, or maintains a store, warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business;

(2) In the case of supplies of particular kinds (lumber and timber products, coal, machine tools, raw cotton, petroleum, green coffee, or hay, grain, feed, and straw), a person or firm satisfying the requirements of Article 101 (b) of the Regulations of the Secretary of Labor (41 CFR 201.101) under the Walsh-Healey Public Contracts Act (41 U. S. C. 35), as amended from time to time.

While the statute cited covers only transactions exceeding $10,000 the Department of Defense is to apply the same standards in transactions of $10,000 or less. The above definitions shall not apply to contracts for supplies no part of which will be manufactured or furnished within the United States, its Territories, Puerto Rico, or the Virgin Islands.

(b) A manufacturer, construction contractor, or regular dealer may bid, negotiate, and contract through an authorized agent: *Provided*, That the agency is disclosed, and the agent acts and contracts in the name of his principal. In this connection, see the clause entitled, "Covenant Against Contingent Fees" set forth in § 7.103–20 and the procedures prescribed for obtaining information concerning contingent or other fees, as set forth in Subpart E of this part.

SUBPART C—GENERAL POLICIES

1. In § 1.304, a new procedure is set forth in § 1.304 providing for the disclosure of Government estimates in construction contracting. Section 1.304, as revised, reads as follows:

§ 1.304 *Construction contracts; disclosure of Government estimate.* (a) Except as provided in paragraph (c) of this section, in contracting for construction, access to or disclosure of information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate.

(b) The Government estimate shall be initially designated "For Official Use Only," unless the nature of the information contained therein requires security classification, in which event it shall be handled in accordance with applicable security regulations. Such "Official Use" designation shall be removed only when the estimate is made public in accordance with paragraph (c) of this section.

(c) If the procurement is to be made by means of formal advertising, a copy of the Government estimate shall be sealed and kept locked with the bids until bid opening. Immediately after the bids have been opened, read, and recorded, the estimate shall be opened, the "For Official Use Only" designation removed and the estimate read and recorded in the same detail as the bids. In the case of a negotiated procurement, the "For Official Use Only" designation shall be removed immediately after award, and the estimate may then be released to an individual or firm upon request.

2. Section 1.309 (d) (2) (i) has been revised to clarify applicability of the clause and to eliminate the necessity of contractors making reports in connection with shipments of de minimis amounts. The revised clause is adaptable for both contracts and delivery orders placed under indefinite quantity and requirements contracts. § 1.309 (d) (2) (i), as revised reads as follows:

§ 1.309 *Preference for United States flag privately owned ocean carriers.* * * *

(d) *Procedures.* * * *

(2) (i) Except as provided in subdivision (ii) of this subparagraph, procuring activities shall include the following clause in any contract which may involve the ocean transportation of supplies of the type described in paragraph (b) (1) (ii) and (iii) of this section:

EMPLOYMENT OF OCEAN-GOING VESSELS

If ocean transportation is required after the date of award of this contract in delivering any of the supplies to be furnished hereunder, the Contractor promptly after each shipment, shall furnish to the Contracting Officer one copy of the applicable ocean shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (40 cubic feet) of dry cargo, or long tons (2,240 pounds) of bulk liquid cargo, shipped on such vessel: *Provided*, That the Contractor need not furnish such a document for any shipment of less than 120 measurement tons of dry cargo or less than 35 long tons of bulk liquid cargo: *Provided further*, If this contract is an indefinite quantity contract or a requirements contract, the Contractor need furnish such documents only in connection with shipments made after the date of any delivery order requiring ocean transportation in delivering supplies thereunder.

Additional provisions concerning the vessels to be used may be inserted in accordance with Departmental procedures.

SUBPART F—DEBARRED, INELIGIBLE, AND SUSPENDED BIDDERS

Sections 1.603–3, and 1.608 have been revised to reflect the DoD policy that findings of the Secretary of Labor with respect to a firm found ineligible as a "manufacturer" or "regular dealer", be extended to transactions of $10,000 or less.

1. Section 1.603–3, as revised, now reads as follows:

§ 1.603 *Treatment to be accorded firms or individuals in debarred or ineligible status.* * * *

§ 1.603–3 *Ineligibility restrictions of the Walsh-Healey Act.* Under section 1 (a) of the Walsh-Healey Public Contracts Act (41 U. S. Code 35 (a)) contracts in excess of $10,000 shall not be awarded to any firm or individual for those materials, articles, or equipment with respect to which the firm or individual has been found by the Secretary of Labor to be ineligible to be awarded a contract (see § 1.602 (e)). The Department of Defense, as a matter of policy, has determined that no contract in any amount for such materials, articles, or equipment shall be awarded to any such ineligible firm or individual. However, contracts may be awarded and bids or proposals may be solicited for commodities in which not declared ineligible regardless of amount.

2. In § 1.608, the second parenthetical statement is revised to read as follows:

§ 1.608 *Sample of list.* * * *

(Type B listings shall not be awarded contracts in any amount and shall not be solicited by bid or proposal for materials, supplies, articles, or equipment in which declared ineligible. However, contracts may be awarded and bids or proposals may be solicited for commodities in which not declared ineligible regardless of amount. Type B listings include those firms found ineligible to receive awards of contracts exceeding $10,000 by reason of findings of the Secretary of Labor that a given firm is not a "manufacturer" or "regular dealer" in stipulated commodities (see § 1.602 (e)). These findings are extended by Department of Defense policy to cover transactions of lesser amounts.)

SUBPART G—SMALL BUSINESS CONCERNS

Cross references have been added to other sections of this subchapter in subparagraphs §§ 1.706–6 (e) and 1.707. Sections 1.706–6 (e) and 1.707, as revised, read as follows:

(e) If the entire set-aside portion is not procured by the method set forth in paragraph (d) above, the determination referred to in § 1.706–1 is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see § 3.201–2 (b) (2) as to negotiation).

§ 1.706–7 *Contract authority.* Contracts for total or partial set-asides, whether entered into by conventional negotiation (see §§ 1.706–5 (b) and

1.706–6 (d) or by "Small Business Restricted Advertising" (see § 1.706–5 (b)), shall cite as authority 10 U. S. C. 2304 (a) (17) and Section 214, Small Business Act of 1953, as amended, in the case of a joint determination, or 10 U. S. C. 2304 (a) (1) through (17), as appropriate, in the case of a unilateral determination (see § 3.201–2 (b) (2)).

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 2—PROCUREMENT BY FORMAL ADVERTISING

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

1. Section 2.405–2 (a) (2) has been revised to reflect the Comptroller General's modification to his previous delegation to the Department of Defense as contained in Comp. Gen. B–120281, 29 June 1954. Section 2.405–2 (a) (2), as revised, read as follows:

§ 2.405 *Mistakes in bids.* * * *

§ 2.405–2 *Mistakes disclosed after opening and prior to award other than obvious or apparent mistakes of a clerical nature.* (a) * * *

(2) Where the bidder requests permission to correct a mistake in its bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake: *Provided*, That, in the event such correction would result in displacing one or more lower bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid.

2. Section 2.405–2 (b), (3) has been revised as follows:

(3) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Materiel Command.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 3—PROCUREMENT BY NEGOTIATION

SUBPART B—CIRCUMSTANCES PERMITTING NEGOTIATIONS

1. Section 3.201–2 (b) (2) has been revised to provide that only set-asides made by unilateral determinations shall be made pursuant to the authority of 10 U. S. C. 2304 (a) (1).

§ 3.201 *National emergency.* * * *

§ 3.201–2 *Application.* * * *

(b) For the duration of the national emergency declared pursuant to Presidential Proclamation 2914, dated December 16, 1950, the Assistant Secretary of Defense (Supply and Logistics) has determined that only the following procurements may be made pursuant to the authority of 10 U. S. C. 2304 (a) (1):

(1) Procurements made pursuant to labor surplus and disaster area programs (set-asides shall be negotiated in accordance with procedures set forth in § 3.219);

(2) Procurements made in keeping with the small business programs (A) after unilateral determinations for set-asides, or (B) to place any part of the total requirements set-aside which are not filled by awards to small business concerns, where no other negotiating authority is appropriate (see § 1.706–6 (e));

(3) Nonperishable subsistence (pending resolution of the recommendation on this subject contained in the report of the Commission on Organization of the Executive Branch of the Government, subject: "Food and Clothing");

(4) Procurements which are authorized to be negotiated under the provisions of § 3.211–1 for not more than $100,000 from contractors other than educational institutions; (such negotiated procurements from educational institutions shall be negotiated under the authority of 10 U. S. C. 2304 (a) (5), (see § 3.205) irrespective of amount); and

(5) Procurements for more than $1,000, but not more than $2,500.

2. Section 3.213–4 has been amended as follows:

§ 3.213 *Technical equipment requiring standardization and interchangeability of parts.*

§ 3.213–4 *Records and reports.* Each Military Department shall maintain on a current basis a master list of items for which determinations and findings have been made under this authority. A copy of each such determination and finding shall be furnished to the Assistant Secretary of Defense (Supply and Logistics) within five days after the date thereof.

(R. S. 161, sec. 2202), 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 5—INTERDEPARTMENTAL PROCUREMENT

SUBPART A—PROCUREMENT UNDER FEDERAL SUPPLY SCHEDULE CONTRACTS

A new § 5.100 has been added, as follows:

§ 5.100 *Applicability.* This subpart applies only to procurements of supplies to be delivered, or services to be performed, in the United States, its Territories, possessions, or Puerto Rico, as indicated in the Federal Supply Schedule check list current at the time of the procurement.

SUBPART B—PROCUREMENT FROM GENERAL SERVICES ADMINISTRATION STORES DEPOTS

A new § 5.200 has been added, as follows:

§ 5.200 *Applicability.* This subpart applies only to procurements of supplies to be delivered, or services to be performed, in the United States, its Territories, possessions, or Puerto Rico, as indicated in the Federal Supply Schedule check list current at the time of the procurement.

SUBPART C—PROCUREMENT THROUGH FEDERAL SUPPLY SERVICE CONSOLIDATED PURCHASING PROGRAMS

A new § 5.300 has been added as follows:

§ 5.300 *Applicability.* This subpart is not applicable to the procurement of supplies and services outside the United States.

SUBPART D—PROCUREMENT OF PRISON-MADE SUPPLIES

A new § 5.400 has been added as follows:

§ 5.400 *Applicability.* This subpart is not applicable to supplies both procured and used outside the United States and Alaska.

SUBPART E—PROCUREMENT OF BLIND-MADE SUPPLIES

A new § 5.500 has been added as follows:

§ 5.500 *Applicability.* This subpart is not applicable to supplies both procured and used outside the United States.

SUBPART H—PROCUREMENT OF CERTAIN UTILITY SERVICES BY USE OF GENERAL SERVICES ADMINISTRATION AREA CONTRACTS

A new § 5.800 has been added as follows:

§ 5.800 *Applicability.* This subpart is not applicable to the procurement of utility services outside the United States.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 7—CONTRACT CLAUSES

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

1. Section 7.102 has been revised by adding cross references to other sections of this subpart. Section 7.102, as revised, now reads as follows:

§ 7.102 *Applicability.* As used throughout this subpart the term "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation, other than (1) purchase orders for $5,000 or less (but see §§ 7.104–15 and 7.104–16), (2) letter contracts, (3) preliminary notices of award, and (4) amendments or supplemental agreements to contracts or purchase orders, which do not effect new procurement; (b) at a fixed price (with or without provision for price redetermination, escalation or other form of price revision as covered in § 3.403); and (c) for supplies other than (1) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (2) experimental, developmental, or research work, or (3) facilities to be provided by the Government under a "Facilities Contract" as defined in Part 13 of this subchapter.

2. Miscellaneous changes have been made to § 7.103 *Required clauses*, as follows:

a. Section 7.103–1 (a) has been revised to change the word "executive" agency to "Federal" agency. Section 7.103–1 (a), as revised, reads as follows:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department, and the head or any assistant head of the Federal agency; and the term "his duly authorized representative" means any

person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

b. In § 7.103–2 (a) the clause has been revised to make it clear that an equitable adjustment may be made for changes affecting the cost or time of performance irrespective of whether the difference in cost or time of performance relates to the changed portion or the unchanged portion of the contract. Section 7.103–2 (a), as revised, reads as follows:

§ 7.103–2 *Changes and disposition of inventory resulting from changes*—(a) *changes.*

CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Department procedures.

c. In § 7.103–5: Paragraph (b) has been revised to clarify the statement in the penultimate sentence concerning the contractor's obligation to correct or replace defective supplies. Former language was capable of being misinterpreted so as to indicate that the contractor, rather than the Government, would make the decision as to whether rejected supplies should be replaced or whether they should be corrected. Paragraph (c) has been revised to provide that the Government reserves the right to charge to the contractor any additional cost of inspection and test when reinspection or retest is necessitated by prior rejection. The word "final" has been deleted wherever it appears in conjunction with the word "acceptance." This change is editorial since, in the context used, "acceptance" means "final acceptance." Section 7.103–5, as revised, reads as follows:

§ 7.103–5 *Inspection.*

INSPECTION

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to final acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirments of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: *Provided,* That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

d. In § 7.103–6 the clause has been revised to eliminate any ambiguity or question as to who is responsible for the supplies after delivery to the Government but prior to acceptance or rejection.

§ 7.103–6 *Responsibility for supplies.*

RESPONSIBILITY FOR SUPPLIES

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

e. Section 7.103–7 has been revised to provide that contractors need no longer certify vouchers or invoices as to correctness, justness and nonpayment, but that carriers, other corporations or agencies, or persons furnishing transportation and accesorial services to the Government must continue to execute the certificates contained on the standard forms prescribed by Comptroller General, in Title 4, Code of Federal Regulations, 7.6 and 9.1. Section 7.103–7, as revised, reads as follows:

§ 7.103–7 *Payments.*

PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

f. In § 7.103–8 the portion of the clause limiting the Government's right of setoff for indebtedness of the contractor is further limited in the revised clause, as provided for in the 1951 amendment (Public Law 30, 82d Congress) to the Assignment of Claims Act of 1940. Section 7.103–8, as revised, reads as follows:

§ 7.103–8 *Assignment of claims.*

ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940 as amended

(31 U. S. Code 203, 41 U. S. Code 15), if this contract provides for payments aggregating $1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same: *Provided*, That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

The last sentence of paragraph (a) of the foregoing clause shall be included in contracts only in time of war, or national emergency proclaimed by the President (including the National Emergency Proclamation of December 16, 1950) or by Act or Joint Resolution of the Congress and shall not be included in contracts entered into after such war or national emergency has been terminated: *Provided*, That in cases where special circumstances make it advisable in the best interests of the Government, and in accordance with Departmental procedures, such sentence may be omitted. In any event the sentence will be deleted from negotiated contracts entered into with foreign contractors.

Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended by Public Law 30, 82d Congress, the effect of the last sentence of paragraph (a) of the foregoing clause is that payments to be made to an assignee after 15 May 1951 of any monies due or to become due under the contract shall not be subject to reduction or set-off for any liability of any nature of the contractor to the Government which arises independently of the contract, or for any liability of the contractor on account of (i) renegotiation under any renegotiation statute or under any statutory renegotiation clause in the contract, (ii) fines, (iii) penalties (which term does not include amounts which may be collected or withheld from the contractor in accordance with or for failure to comply with the terms of the contract), or (iv) taxes, Social Security contributions, or the withholding or nonwithholding of taxes or Social Security contributions, whether arising from or independently of the contract.

The assignee is required by said act, as amended, to "File written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment."

g. In § 7.103–11, the paragraph now designated (c) has been revised to make it clear (i) that the specific causes of delay listed are subject to the general requirement of being beyond the contractor's control and without his fault or negligence and (ii) that both contractor and subcontractor must be free from fault or negligence before contractor can be excused. Section 7.103–11, as revised, now reads as follows:

§ 7.103–11 *Default.*

DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor or subcontractor pursuant to the provisions of paragraph (c) of this clause, such notice of default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. Except as otherwise provided in this contract, this paragraph (e) applies only if this contract is with a military department.

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

h. In § 7.103–12, the clause has been revised to limit the finality of administrative decisions in accordance with Public Law 356, 83d Congress. Paragraph (b) has been added to make clear that reference in paragraph (a) to fact questions is not intended to preclude consideration of related law questions, subject to the statutory limitation of the finality of law determinations by administrative officials. The reference in the clause to "court of competent jurisdiction" is not intended to affect the jurisdiction of the General Accounting Office. Section 7.103–12, as revised, reads as follows:

§ 7.103–12 *Disputes.*

DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity

to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

In accordance with Departmental procedures, the foregoing clause may be modified to provide for intermediate appeal to the Head of the Procuring Activity concerned. The decision of the contracting officer referred to in the above clause shall, if mailed, be sent by certified mail, return receipt requested.

1. In § 7.103–14 the clause has been revised to reflect certain provisions of Executive Order No. 10582 of December 17, 1954, modifying the application of the domestic preference. Section 7.103–14, as revised, reads as follows:

§ 7.103–14 *Buy American Act.*

BUY AMERICAN ACT

(a) In acquiring end products, the Buy American Act (41 U. S. Code 10 a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

j. Sections 7.103–16 and 7.103–20 have been revised to conform to the revised Standard Form 32 or to the changes noted above. Sections 7.103–16 and 7.103–20, as revised, read as follows:

§ 7.103–16 *Eight-hour law of 1912—overtime compensation.* Insert the contract clause set forth in § 12.303–1 of this subchapter. Note the introductory provision required by § 12.303–2 of this subchapter in the case of contracts with a State or political subdivision thereof.

§ 7.103–20 *Covenant against contingent fees.*

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

3. In § 7.104–14 the clause has been added to the Standard Form 32, and is consistent with and designed to promote the objectives of the Federal Property and Administrative Services Act, the Armed Services Procurement Act, and the Small Business Act of 1953.

§ 7.104–14 *Utilization of small business concerns.* Insert the clause set forth below in all fixed-price supply contracts, in amounts exceeding $5,000, except those contracts entered into with foreign contractors which are to be performed outside of the United States, its Territories, its possessions, and Puerto Rico.

UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

4. Section 7.104–19 is revised.

§ 7.104–19 *Cargo preference act.* In accordance with the requirements of § 1.309 (d) (2) of this subchapter, insert one of the contract clauses set forth therein as appropriate.

5. Coverage in this subchapter has been expanded to provide in § 7.107 an additional price escalation clause for use in situations where labor or material cost factors are subject to change. The new § 7.107 reads as follows:

§ 7.107 *Price escalation clause (labor and material).* (a) The following price escalation clause is authorized for use in negotiated fixed-price supply contracts where (1) the price exceeds $50,000, (2) the period of performance exceeds six months, (3) there is no major element of design engineering or developmental work involved in producing the items being procured, and (4) one or more identifiable labor or material cost factors are subject to change.

(b) The Schedule shall describe in detail the types of labor and materials subject to escalation, the labor rates (including fringe benefits, if any), and unit prices of materials, which may be increased or decreased, and the quantities of labor and specified materials allocable to each unit of supplies to be delivered under the contract. The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price escalation pursuant to clause ____ of this contract.

CONTRACT ITEM NO. 1

Types of labor and materials	*Rates of pay and material prices*	*Quantities and direct costs per unit of procurement*
Drill Press Operator.	$3.00/hour, no fringe benefits included.	20 min.—$1.00.
Welder	$2.75/hour .05/hour—vacation pay .20/hour—pension plan	
	$3.00	10 min.—$0.50.
Copper Sheet	$0.40/lb.	2 lb.—$0.80.
Purchased parts:		
(1) ABC tube X5721.	$1.00 each	3 ea.—$3.00.
(2) XYZ part No. 6948.	$0.50 each	10 ea.—$5.00.

The percentage figure to be used in subparagraph (d) (vi) of the clause shall not exceed 10 percent.

(c) In negotiating adjustments under the clause, the contracting officer shall consider work in process and materials on hand at the time of changes in labor rates or materials prices since these elements may have a significant impact on equitable price adjustments.

PRICE ESCALATION

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs of performance resulting from increases (i) the Contractor's rates of pay for labor or (ii) the unit prices for materials, set forth in the Schedule.

(b) If at any time during the performance of this contract there is an increase or decrease in the rates of pay for labor or unit prices for materials set forth in the Schedule, the Contractor shall notify the Contracting Officer thereof within 60 days of such increase or decrease or within such further period as may be approved in writing by the Contracting Officer, but in any event not later than final payment under the contract. Such notice shall include the Contractor's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph (c) below and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount, both of the increase or decrease and of the Contractor's proposal for an equitable adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an equitable adjustment, and the effective date thereof, in the contract unit prices to reflect any change in the cost of performance of this contract due to the increase or decrease in rates of pay for labor or unit prices for materials set forth in the Schedule: *Provided, however*, That such negotiations may be postponed by the Contracting Officer until an accumulation of such increases and decreases results in an adjustment allowable under (d) (v). The equitable adjustment and the effective date thereof, shall be set forth in an amendment or supplemental agreement to this contract. Such amendment or supplemental agreement shall also revise the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increase or decrease

therein. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Notwithstanding any other provision of this clause, any price adjustment under this clause shall be subject to the following limitations:

(i) There shall be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(ii) There shall be no adjustment other than for increases or decreases in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(iii) There shall be no adjustment for any increase or decrease in the quantities of labor or materials set forth in the Schedule for each item to be delivered hereunder;

(iv) No upward adjustment shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the adjustment, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule;

(v) Except as provided in (e) below, there shall be no adjustment for any change in rates of pay for labor or unit prices for materials which would not result in a net change of at least three percent of the then current total contract price; and

(vi) There shall be no adjustment upward which would cause any adjusted contract unit price to exceed _____ percent of the corresponding original contract unit price.

(e) If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to (c) above, the limitations of (d) (v) shall not apply.

(f) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that it has given notice of all such decreases in compliance with (b) above.

(g) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the costs of labor and materials during all reasonable times until three years after final payment under this contract.

6. Sections 7.203–2 and 7.203–5 (a) and (b) have been revised to conform to the revised Standard Form 32.

§ 7.203–2 *Changes.*

CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the day of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures.

In the interest of economy, the Government has a basic responsibility fully to utilize its property. Consistent therewith the Government has reserved the right in the above clause to make changes in the amount of Government-furnished property, including the right to increase the amount of Government-furnished property. Prior to exercising the right to increase the amount of Government-furnished property, contracting officers will consider fully any inequities which may result to the contractor as against the net benefits which may accrue to the Government.

§ 7.203–5 *Inspection of supplies and correction of defects.* (a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) of this section, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (1) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (2) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (3) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

7. Section 7.204–17 has been added as follows:

§ 7.204–17 *Cargo preference act.* In accordance with the requirements of § 1.309 (d) (a) of this subchapter, insert one of the contract clauses set forth therein as appropriate.

SUBPART D—CLAUSES FOR COST REIMBURSEMENT TYPE RESEARCH AND DEVELOPMENT CONTRACTS

A modification of the Records clause is § 7.203–7 for use in cost-reimbursement type contracts with educational institutions for experimental, developmental or research work without fee or profit, has been set forth as a new clause in § 7.403–8. This clause was developed with the Comptroller General's concurrence.

§ 7.403–8 *Records.* The following clause shall be inserted in all cost-reimbursement type contracts entered into with educational institutions for experimental, developmental or research work without fee or profit:

RECORDS, UNIVERSITIES

(a) (1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of _____*: *Provided, however*, That no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit, or reproduction by any authorized representative of the Department or of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through _____* such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records for a period of six years (unless a longer period of time is provided by applicable statute or by any other clause in this contract) from the date of the voucher or invoice submitted by the Contractor after the completion of work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance: *Provided, however*, That records which relate to (A) appeals under the clause of this contract entitled "Disputes," (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs or expenses of the contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of, but in no event for less than the six-year period mentioned above: *And provided further*, That if the Contractor plans to destroy any records sooner than six years after the date of the voucher or invoice to be submitted after the completion of the work performed during the total of the periods of performance established by this contract and all amendments and supplemental agreements thereto, which voucher or invoice shall be designated "completion voucher" or "completion invoice," it shall give written notice to the Contracting Officer and to the Comptroller General of the United States, specifying any records which it plans to destroy after the expiration of 90 days from the receipt of such notice, and shall retain any records which either the Contracting Officer or the Comptroller General, by written notice within 90 days after receipt of the Contractor's notice, requires to be retained for a further specified period of time.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in the proviso of subparagraph (4) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Department, or any of their duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding $1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

In the foregoing clause, insert, in contracts of the Department of the Army and the Department of the Air Force, the words "the Contracting Officer," and insert, in contracts of the Department of the Navy, the words "the Contract Audit Division of the Comptroller of the Navy," in the space designated by an asterisk (_____*).

SUBPART E—CLAUSES FOR PERSONAL SERVICES CONTRACTS

Section 7.503–2 has been revised to provide that contractors need no longer certify vouchers or invoices as to correctness, justness and nonpayment, but that carriers, other corporations or agencies, or persons furnishing transportation and accessorial services to the Government must continue to execute the certificates contained on the standard forms prescribed by Comptroller General, in Title 4, Code of Federal Regulations, §§ 7.6 and 9.1. Section 7.503–2, as revised, reads as follows:

§ 7.503 *Required clauses.* * * *

§ 7.503–2 *Payments.*

PAYMENTS

Payment for the services performed by the Contractor, as set forth in the Schedule of this contract, shall be made at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements to the office or officer designated herein and at the time provided for herein. In addition to the foregoing the Contractor shall be paid (i) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from his home or regular place of employment in accordance with Standardized Government Travel Regulations as authorized in appropriate Travel Orders; and (ii) such other transportation expenses as may be provided for in the Schedule.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 9—PATENTS, DATA, AND COPYRIGHTS

SUBPART A—PATENTS

Section 9.101 has been deleted and is now reserved. Sections 9.102 and 9.102–1 have been modified to make use of the clause optional in contracts regardless of amount rather than mandatory in contracts over $5,000, and prohibited from use in contracts under $5,000, as heretofore. Section 9.107–3 has been revised to include specific projects within a contractor's independent research program as well as specific product improvement programs. Section 9.107–4 has been revised to clarify the deviation status of patent rights not authorized by §§ 9.107–1 through 9.107–3. Section 9.107–5 has been added to clarify the rights of the Government in connection with releasing manufacturing instructions to commercial firms for the purpose of producing and marketing, in competition with the inventor of the item or the inventor's commercial licensee's items required by the general public for civilian defense purposes. Other changes in this subpart involve amendments to specifically designate certain paragraphs which are applicable only to contracts to be performed within the United States and certain other paragraphs which are applicable only to contracts to be performed outside the United States. Wherever the phrase, "the United States, its Territories, or possessions," is used, the words "Puerto Rico" have been added in view of the changes in definitions provided by Public Law 1028, 84th Congress. Subpart A, as revised, reads as follows:

Sec.

Sec.
9.110–2 Reporting of royalties in contracts to be performed outside the United States.
9.111 Adjustment of royalties.
9.112 [Reserved.]

AUTHORITY: §§ 9.100 to 9.112 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202.

§ 9.100 *Scope of subpart.* This subpart prescribes contract clauses and instructions which define and implement the policy of the Department of Defense with respect to—

(a) Inventions relating to experimental, developmental, or research work performed under Government contracts.

(b) Patent infringement liability resulting from work performed under Government contracts.

(c) Patent royalties payable in connection with the performance of Government contracts.

(d) Security requirements covering patent applications containing classified subject matter filed by contractors.

§ 9.101 [Reserved.]

§ 9.102 *Authorization and consent.* (a) Under 28 U. S. Code 1498, any suit for infringement of a patent based on the manufacture or use of a patented invention for the Government by a contractor or by a subcontractor (including lower-tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, in order that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent shall be given as herein provided. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) An authorization and consent clause shall not be used in contracts where both performance and delivery are to be outside the United States, its Territories, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its Territories, its possessions, or Puerto Rico, in which case the instructions of §§ 9.102–1 and 9.102–2 are applicable.

§ 9.102–1 *Authorization and consent in contracts for supplies.* The contract clause set forth below may be included in all contracts for supplies (including construction work), except that it shall not be used:

(a) When prohibited by § 9.102 (b); or

(b) In contracts exclusively for experimental, developmental, or research work which are subject to the provisions of § 9.102–2.

AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for patent infringement shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

§ 9.102–2 *Authorization and consent in contracts for research or development.* Greater latitude in the use of patented inventions is to be allowed in a contract for experimental, developmental, or research work than in a contract for supplies. Unless prohibited by § 9.102 (b), the clause set forth below shall be included in all contracts calling exclusively for experimental, developmental, or research work, and may be included in contracts calling for both supplies and experimental, developmental, or research work. If the clause set forth below is included in a contract, the clause in § 9.102–1 shall not be included.

AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any patented invention in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

§ 9.103 *Patent indemnification of Government by contractor.* In order that the Government may be reimbursed for liability for patent infringement arising out of or resulting from the performance of construction contracts or contracts for supplies which normally are or have been sold or offered for sale to the public in the commercial open market, or which are the same as such supplies with a relatively minor modification thereof, clauses providing for indemnification of the Government are to be included in such contracts in accordance with the instructions preceding the clauses set forth below. A patent indemnity clause shall not be used in contracts under the following circumstances:

(a) Where the contract is for supplies which clearly are not or have not been sold or offered for sale to the public in the commercial open market. However, even in the foregoing instance, a patent indemnity clause may be included where (1) in the case of contracts to be awarded by formal advertising it is desired to obtain an indemnity as to components and spare parts so sold or offered for sale, in which case the clause in § 9.103–2 may be used; or (2) in the case of contracts to be awarded either by formal advertising or negotiation, a patent owner contends that the prospective procurement would infringe his patent and the low bidder or offeror is willing to indemnify the Government as to such patent without increase in price on the basis that the patent is invalid or not infringed, or for other good reasons; or

(b) Where both performance and delivery are to be outside the United States, its Territories, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its Territories, its possessions, or Puerto Rico, in which case the instructions of §§ 9.103–1, 9.103–2, or 9.103–3 are applicable; or

(c) Where the contract is for an amount of $5,000 or less, except that, as a matter of administrative convenience, the clause need not be deleted where it is a part of a standard form being used for contracts of $5,000 or less, since it is self-deleting as to such contracts.

§ 9.103–1 *Patent indemnification in formally advertised contracts; commercial status predetermined.* (a) Except as prohibited by § 9.103, the clause set forth below is appropriate in formally advertised construction contracts and shall be included in formally advertised contracts for supplies when it has been determined in advance of issuing the invitation for bids that the supplies (or such supplies apart from relatively minor modifications to be made thereto) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market.

PATENT INDEMNITY (PREDETERMINED)

If the amount of this contract is in excess of $5,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from the addition to, or change in, the supplies furnished or construction work performed, which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the

Contractor, unless required by final decree of a court of competent jurisdiction.

(b) Certain supply contracts call only in part for items which normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, or such items with relatively minor modifications. For the purpose of excluding from patent indemnification such specific items as normally are not or have not been sold or offered for sale by any supplier to the public in the commercial open market, the following sentence may be added to the end of the clause set forth in paragraph (a) of this section:

The foregoing shall not apply to the following contract items:
(List the items to be excluded)

§ 9.103–2 *Patent indemnification in formally advertised contracts—commercial status not predetermined.* Except as prohibited by § 9.103, the clause set forth below is appropriate in (a) formally advertised construction contracts and (b) formally advertised contracts for supplies or component parts thereof when it is not determined in advance of issuing the invitation for bids that such supplies or component parts (or such supplies or component parts apart from relatively minor modifications to be made thereto) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market:

PATENT INDEMNITY (NOT PREDETERMINED)

If the amount of this contract is in excess of $5,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patents issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or component parts thereof, or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government, of such supplies, construction work, or component parts thereof, which supplies or component parts either normally are or have been sold or offered for sale to, and which construction work normally is of a type performed for, the public in the commercial open market by any supplier on or before the date set for opening of bids, or are such supplies, construction work, or component parts thereof, with relatively minor modifications made thereto. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

§ 9.103–3 *Patent indemnification in negotiated contracts.* A patent indemnity clause is not required to be included in negotiated contracts, but may be included in negotiated construction contracts and, except as otherwise authorized in § 9.103 (a) (2), may be included in negotiated contracts for supplies only where such supplies normally are or have been sold or offered for sale by the contractor to the public in the commercial open market, or are such supplies with relatively minor modifications made thereto. Ordinarily, it should be quite feasible for the contracting officer to determine, in consultation with the contractor, whether the supplies being purchased normally are on sale or have been sold or offered for sale by the contractor to the public in the commercial open market.

(a) Subject to the foregoing and to the prohibitions in § 9.103, the clause set forth in § 9.103–1 (a) is approved for use in negotiated contracts for construction work or supplies.

(b) Certain supply contracts call only in part for items which normally are or have been sold or offered for sale by the contractor to the public in the commercial open market, or such items with relatively minor modifications. For the purpose of excluding from patent indemnification such specific items as normally are not or have not been sold or offered for sale by the contractor to the public in the commerical open market, the following sentence may be added to the end of the clause approved for use in paragraph (a) of this section.

The foregoing shall not apply to the following contract items:
(List the items to be excluded)

§ 9.103–4 *Waiver of indemnity by the Government.* In the event that it is desired to exempt one or more specified United States patents from the indemnification provisions of the preceeding clauses, authority shall first be obtained from the Secretary of the Military Department concerned or his authorized representative, and the following clause shall be included in the contract, in addition to the patent indemnity clause:

WAIVER OF INDEMNITY

Any provision of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in the performance of this contract, of any invention covered by the United States patents identified and listed below, and waives indemnification by the Contractor with respect to such patents: (Identify the patents by number or by other means if more appropriate)

§ 9.104 *Notice and assistance.* The Government should be notified by the contractor of all claims of infringement in connection with the performance of a Government contract which come to the contractor's attention. The contractor should also assist the Government, to the extent of information and evidence in the possession of the contractor, in connection with patent litigation arising out of or resulting from the performance of the contract. Accordingly, the clause set forth below shall be included in all contracts in excess of $5,000 for supplies, construction, or experimental, developmental, or research work; except that it shall not be included in contracts—

(a) Where both performance and delivery are to be outside the United States, its Territories, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its Territories, its possessions, or Puerto Rico; or,

(b) Of lesser amounts, except that as a matter of administrative convenience, the clause need not be deleted when it is a part of a standard form being used for contracts of $5,000 or less, since it is self-deleting as to such contracts:

NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract is in excess of $5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of litigation against the Government on account of any claim of patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

§ 9.105 *Processing of infringement claims.* The Military Departments shall process claims for alleged unauthorized use of inventions in accordance with instructions of each respective Military Department.

§ 9.106 *Classified contracts.* Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U. S. Code 791 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interests of national security. Accordingly, except as otherwise provided in § 9.106–1, the following clause shall be included in every classified contract and in every unclassified contract which covers or is likely to cover classified subject matter:

FILING OF PATENT APPLICATIONS

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U. S. Code 181–188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U. S. Patent Office for filing, but the Contractor shall not

be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

§ 9.106–1 *Classified contracts to be performed outside the United States.* The following clause shall be included in classified contracts where the work is to be performed outside the United States, its Territories, its possessions, or Puerto Rico, regardless of the place of delivery:

FILING OF PATENT APPLICATIONS (FOREIGN)

While and so long as any subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country, an application or registration for a patent containing any of said subject matter without first obtaining written approval of the Contracting Officer.

§ 9.107 *Patent rights under contracts involving research or development.*

§ 9.107–1 *License rights*—(a) *General rule.* Under any contract or modification thereof having experimental, developmental, or research work as one of its purposes, the Government should receive a royalty-free, nonexclusive license to practice or have practiced any inventions conceived or first actually reduced to practice in the course of performing such work or in the course of performing any prior experimental, developmental, or research work done upon the understanding in writing that a contract would be awarded. The contract cost or price should in no event be increased merely by reason of the inclusion of the Patent Rights clause set forth in paragraph (c) of this section.

(b) *Exclusion of inventions from the license grant.* Upon request of the contractor, the contracting officer shall carefully consider and may exclude from the grant in the Patent Rights clause any invention covered by a United States patent issued or application for patent filed by or on behalf of the contractor prior to the award of a contract when he finds one or more of the following circumstances to be established:

(1) The contractor has expended sums in developing the invention (as represented by research and development costs and expenses for preparing and prosecuting the patent application) which are relatively large in comparison to the amount of the proposed contract or such portion of the proposed contract amount as can be allocated in advance for the development of such an invention (in determining the sums expended by the contractor there shall be included only amounts which can be allocated to the invention which is to be excluded; such sums shall not include the entire cost of a research department or program which cannot be allocated as above provided);

(2) The practicability of such an invention has been established as by engineering design;

(3) The invention covers a basic material and it is not the purpose of the contract to develop such material;

(4) The invention is useful only for military purposes and the contractor does not have facilities for furnishing the item to the Government in production quantities.

Any inventions to be excluded from the license grant by reason of the foregoing circumstances shall be specifically identified and listed in the contract Schedule.

(c) *Contract clause.* The clause set forth below shall be included in every contract having as one of its purposes, experimental, developmental, or research work which is to be performed within the United States, its Territories, its possessions, or Puerto Rico. Any such contract which is to be performed outside the United States, its Territories, its possessions, or Puerto Rico, shall include a patent rights clause which may be based on the Patent Rights clause set forth below. See § 16.809 of this subchapter for an approved form for optional use by contractors in reporting information required by paragraphs (c) (ii), (c) (iii), and (h) of the clause. In the administration of paragraph (e) of the clause, a request for conveyance of foreign rights to the Government is not required when the contractor does not file an application for patent in a foreign country under the conditions provided in that paragraph, unless the Government intends to apply for such patent.

PATENT RIGHTS

(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either—

(A) In the performance of the experimental, developmental, or research work called for or required under this contract; or

(B) In the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded;

Provided, That the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts set forth in (g), (h), and (i) below) who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" means any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use and disposition according to law, of any article or material, and in use of any method. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields.

(2) With respect to:

(i) Any Subject Invention made by other than Technical Personnel;

(ii) Any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a) (i) above; and

(iii) The practice of any Subject Invention in foreign countries; the obligation of the Contractor to grant a license as provided in (b) (1) above, to convey title as provided in (d) (ii) (B) or (d) (iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) A written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

(ii) Interim reports at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and

(iii) Prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c) (i) above, the Contractor shall do the following:

(i) If the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) If the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) Inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by

the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) Convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the right of the Contractor specified in (e) below to file foreign applications, and subject further to the reservation of a non-exclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) The Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) In the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d) (ii) above; and

(v) The Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall have the exclusive rights to file applications on Subject Inventions in each foreign country within:

(i) Nine months from the date a corresponding United States application is filed;

(ii) Six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) Such longer period as may be approved by the Contracting Officer.

The Contractor shall, upon written request of the Contracting Officer, convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c) (ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c) (i) above shown to be due in accordance with any interim report delivered under (c) (ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten percent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars ($5,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of such amount, or five thousand dollars ($5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) The final report required by (c) (iii) above;

(ii) Written disclosures for all Subject Inventions required by (c) (i) above which are shown to be due in accordance with interim reports delivered under (c) (ii) above or in accordance with such final reports or are otherwise known to be unreported; and

(iii) The information as to any subcontractor required by (h) below.

The maximum amount which may be withheld under this paragraph (f) shall not exceed ten percent (10%) of the amount of this contract or five thousand dollars ($5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall exert all reasonable effort in negotiating for the inclusion of this Patent Rights clause in any subcontract hereunder of three thousand dollars ($3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept the Patent Rights clause, the Contractor shall not proceed with the subcontract without written authorization of the Contracting Officer, and upon obtaining such authorization, shall cooperate with the Government in the negotiation with such subcontractor of an acceptable patent rights clause: *Provided, however,* That the Contractor shall in any event require the subcontractor to grant to the Government patent rights under Subject Inventions of no less scope and on no less favorable terms than those which the Contractor has under such subcontracts, except that in no event shall the subcontractor be required to grant to the Government patent rights in excess of those herein agreed to be granted to the Government by the Contractor.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing a patent rights clause, furnish the Contracting Officer a copy of such clause, and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to such subcontract clause, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to Subject Inventions.

(i) When the Contractor shows that it has been delayed in the performance of this contract by reason of its inability to obtain in accordance with (g) above a suitable patent rights clause from a qualified subcontractor for any item or service required under this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay; and, upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances; and the contract shall be modified accordingly. If the Contractor, after exerting all reasonable effort, is unable to obtain a qualified subcontractor as set forth above, the Contractor may submit to the Contracting Officer a written request for waiver or modification of the requirement that a suitable patent rights clause be included in the subcontract.

Such request shall specifically state that the Contractor has used all reasonable effort to obtain such qualified subcontractor, and shall cite the waiver or termination provision hereinafter set forth. If, within thirty-five (35) days after the date of receipt of such request for a waiver or modification of said requirement, the Contracting Officer shall fail to deny in writing such request, the requirement shall be deemed to have been waived by the Government. If within such period the Contractor shall receive a written denial of such request by the Contracting Officer, this contract shall thereupon automatically terminate and the rights and obligations of the parties shall be governed by the provisions of the clause of this contract providing for termination for the convenience of the Government.

§ 9.107–2 *Contracts relating to atomic energy.* (a) Except as provided in paragraph (b) of this section the following paragraph shall be inserted as part of the Patent Rights clause set forth in § 9.107–1 in all research or development contracts relating to atomic energy.

(j) With respect to any Subject Invention made by employees of the Contractor (except clerical and manual labor personnel who do not have access to technical data), and relating to the production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Acts of 1946 (42 U. S. Code 1801–1819) and of 1954 (42 U. S. Code 2011–2296), the Contractor agrees:

(i) To furnish to the United States Atomic Energy Commission (hereinafter in this paragraph (j) referred to as "the Commission") through the Contracting Officer complete information regarding such Subject Invention, the Commission to have the sole and conclusive power to determine whether and where a patent application shall be filed, and to determine the disposition of the title to and rights under any such application or any patent that may issue thereon;

(ii) To obtain the execution of and deliver to the Commission, all documents relating to each such Subject Invention and to do all things necessary or proper to carry out any determination of the Commission, made under (j) (i) above;

(iii) Unless otherwise authorized in writing by the Commission to obtain patent agreements from all such employees to effectuate the purposes of this paragraph (j); and

(iv) Unless otherwise authorized in writing by the Commission, to insert this paragraph (j) in all subcontracts.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Acts of 1946 and 1954 shall be asserted by the Contractor or its employees with respect to any Subject Invention covered by this paragraph.

(b) Where the work to be performed or the material or equipment to be furnished by the contractor is of such character that any such Subject Inventions that may be made will probably (1) relate only incidentally (and not directly)

to some phase of the basic research or development work which the Atomic Energy Commission conducts or sponsors, (2) relate to a field or work in which the contractor has an established industrial and patent position, or (3) result from routine development or production work by the contractor, a provision authorizing the contractor to retain license rights may be incorporated in the paragraph set forth in paragraph (a) of this section. Any such provision or any deviation from the paragraph set forth in paragraph (a) of this section, which the military department concerned proposes to authorize, shall be forwarded in accordance with Departmental procedures to the Atomic Energy Commission for recommendation and shall not be authorized except with the concurrence of the Atomic Energy Commission.

§ 9.107–3 *Patent license rights under product improvement programs or independent research programs.* Where a Military Department, under its established procedures, provides substantial financial support to a contractor's (a) specific product improvement program; or (b) specific projects within its independent research program;

the Military Department may obtain for the Government patent license rights to inventions, improvements, or discoveries conceived or first actually reduced to practice during or as a result of such support: *Provided,* The obtaining of such rights and the contractual arrangements for such rights are approved in the Army and the Navy by the head of the procuring activity concerned, and in the Air Force by the Deputy Director/Procurement, Headquarters, Air Materiel Command or by the Director of Procurement, Headquarters, Air Research and Development Command.

§ 9.107–4 *Patent rights not to be obtained.* (a) Except as authorized in §§ 9.107–1, 9.107–2, 9.107–3, and (b) below, patent license rights shall not be requested in the negotiation of contracts for supplies or services (other than contracts where the primary item of procurement is a license under or an assignment of a patent). It is the policy of the Military Departments, except as otherwise provided in § 9.107–1, to pay a reasonable compensation for the use of an invention covered by a valid patent enforceable against the Government, but the questions of infringement, validity, and enforceability of the patent shall be determined by personnel having cognizance of patent matters for the Military Department concerned.

(b) The provisions of paragraph (a) of this section are not applicable to contracts to be performed outside the United States, its Territories, its possessions, or Puerto Rico.

§ 9.107–5 *Contracts relating to civil defense.* The paragraph set forth below may be inserted in lieu of paragraph (b) (1) as part of the Patent Rights clause prescribed in § 9.107–1 (c) in all contracts for experimental, developmental, or research work relating primarily to supplies or services intended for the general public for civil defense purposes.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use and disposition of any article or material, and in the use of any method; with the right in the Government to sublicense others to practice each Subject Invention in the manufacture, use and sale of any article or in the use of any method for the purpose of providing supplies or services to the general public in the furtherance of the nation's civil defense.

§ 9.108 *Patent rights under contracts for personal services.* The following clause shall, except as otherwise provided in § 7.503–9 of this subchapter, be inserted in all personal services contracts for services to be performed by an individual as set forth in § 7.502 of this subchapter.

PATENTS

(a) For the purpose of determining the rights of the Government and the Contractor in and to inventions, the Contractor agrees to be bound by all provisions of Executive Order 10096, dated 23 January 1950, and any orders, rules, regulations, or the like issued thereunder.

(b) The Contractor shall: (i) make written disclosure promptly to the Contracting Officer of all inventions of the Contractor which are conceived or first reduced to practice during the term of this contract, and sign and execute all papers necessary for conveying to the Government the rights to which the Government is entitled in accordance with the determination made under the provisions of Executive Order 10096, or (ii) certify to the Contracting Officer that, to the best of the Contractor's knowledge and belief, no inventions have been conceived or first reduced to practice during the term of this contract.

§ 9.109 *Followup of patent rights.* Appropriate systems of followup in connection with contracts for experimental, developmental, or research work shall be maintained by the Military Departments in order that inventions in which the Government may have an interest may be properly identified and formal agreements evidencing the Government's rights therein shall be obtained.

§ 9.110 *Reporting of royalties.* The Government has acquired license and other rights under a large number of inventions as the result of Government-sponsored research and development and in other ways. In order that the Government may determine whether the charging of royalties to the Government is inconsistent with the rights which the Government has acquired or is otherwise improper and in order that negotiation for the voluntary reduction of excessive royalties may be undertaken, the Military Departments should be informed of royalties charged or to be charged in connection with the performance of Government contracts. The contract clause set forth below shall be included in all contracts in excess of $50,000, except as follows:

(a) The clause shall not be included in contracts coming within the provisions of § 9.110–2.

(b) The clause shall not be included in contracts of $50,000 or less, except that, as a matter of administrative convenience, the clause need not be deleted when it is a part of a standardized form being used for contracts of $50,000 or less, since it is self-deleting as to such contracts.

(c) The clause need not be included in contracts for experimental, developmental, or research work, regardless of the amount of the contract, where under such contracts only a report or reports are to be delivered to or for the Government.

REPORTING OF ROYALTIES

The provisions of this clause shall be applicable only if the amount of the contract is in excess of $50,000.

(a) The Contractor shall report in writing (in quadruplicate) to the Contracting Officer as soon as practicable after execution of this contract whether or not any royalties in excess of $250 have been paid or are to be paid by the Contractor directly to any person or firm in connection with the performance of this contract. If royalties in excess of $250 have been paid or are to be paid to any person or firm, the report shall include the following items of information with respect to such royalties (including the initial $250):

(1) The name and address of each licensor to whom royalties in excess of $250 have been paid or are to be paid,

(2) The patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties,

(3) The manner of computing the royalties consisting of (i) a brief identification of each royalty-bearing unit or process, (ii) the total amount of royalties, and (iii) the percentage rate or dollars and cents amount of royalties on each such unit or process: *Provided,* That if the royalties cannot be computed in terms of units or dollars and cents value, then other data showing the manner in which the Contractor computes the royalties.

(b) In lieu of furnishing a report under paragraph (a), the Contractor may furnish a single, consolidated report for each accounting period of the Contractor during which the Contractor has contracts with the Government, provided the Contractor has requested and obtained the prior written approval of the _____*. Such consolidated report shall be furnished, when the furnishing thereof has been approved, in the number of copies as approved, as soon as practicable after the close of the accounting period covered by the report. Such consolidated report shall be made in accordance with Contractor's established accounting practice and shall include, for the accounting period, the total amount of royalties accruing to each licensor at a rate in excess of $1,000 per annum on the Contractor's over-all business, together with (i) the name and address of each such licensor, (ii) the patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties, (iii) a brief description of the subject matter of the license under which royalties are charged, (iv) the percentage rate or unit amount, or if the royalties do not accrue by rate or unit amount, such other data showing the manner by which the royalties accrue to licensor, and (v) an estimate or approximation (without detailed accounting) of the portion of such royalties that may be attributable to Government contracts. The Contractor shall, if requested by the Government, furnish at Government expense a more detailed allocation of such royalty payments attributable to Government contracts.

(c) In the event that the Contractor requests written approval to furnish consolidated reports under paragraph (b) above,

the _____* shall promptly consider the request and furnish to the Contractor a letter stating whether or not the request is approved and, notwithstanding any such approval, the Contracting Officer shall have the right to question any such subsequently furnished report as to accuracy or completeness of data and to ask for additional information. The Contractor shall furnish a copy of such letter of approval to the Contracting Officer administering this contract.

(d) After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, further payment shall be withheld until a reserve of either (1) ten percent (10%) of such amount or (ii) $5,000, whichever is less, shall have been set aside, such reserve or the balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer the report called for by paragraph (a) hereof or the copy of the letter approving the Contractor's request to furnish the report under paragraph (b): *Provided*, That no amount shall continue to be withheld from payment for the causes specified in this paragraph (d) if the Contracting Officer shall find that the Contractor has not been furnished a letter as required by paragraph (c) within a reasonable time after making written request to submit a single, consolidated report under the provisions of paragraph (b) of this clause: *And provided further*, That the Contracting Officer may, in his discretion, order payment to be withheld in the amount and manner above provided if the report called for by paragraph (a) is unsatisfactory or if the _____* notifies the Contracting Officer that the report called for by paragraph (b) is due but has not been received, or if received, is found to be unsatisfactory. No amount shall be withheld under this paragraph when the minimum amount specified by this paragraph is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any right accruing to the Government under this contract.

In the foregoing clause, insert, in the space designated by an asterisk (____*) in contracts of the Department of the Army and the Department of the Air Force, the words "Chief, Patents Division, Office of The Judge Advocate General;" and in contracts of the Department of the Navy, the words "Assistant Chief of Naval Research for Patents."

§ 9.110–1 *Approved form of royalty report.* See § 16.806 of this subchapter for an approved form for optional use by contractors in making reports as required by paragraph (a) of the Reporting of Royalties clause of § 9.110.

§ 9.110–2 *Reporting of royalties in contracts to be performed outside the United States.* In contracts where the work is to be performed outside the United States, its Territories, its possessions, or Puerto Rico, regardless of the place of delivery, the following clause shall be included in the contract:

REPORTING OF ROYALTIES (FOREIGN)

If this contract is in an amount which exceeds $50,000, the Contractor shall report in writing to the Contracting Officer during the performance of this contract the amount of royalties paid or to be paid by the Contractor directly to others in the performance of this contract. The Contractor shall also (i) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer and (ii) insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of fifty thousand United States dollars.

§ 9.111 *Adjustment of royalties.* If the contracting officer believes that any royalties paid, or to be paid, under a contract or prospective contract are unreasonable or otherwise improper, he should promptly report the matter to personnel having cognizance of patent matters for the procuring activity concerned. Such personnel shall review the royalties thus reported and such royalties as are reported under § 9.110. In coordination with the contracting officer, such personnel shall:

(a) Take prompt action to protect the Government against payment of royalties on supplies or services (1) with respect to which the Government has a royalty-free license, or (2) at a rate in excess of the rate at which the Government is licensed, or (3) where the royalties in whole or in part constitute an improper charge;

(b) In appropriate cases enter into negotiation for a voluntary reduction of royalties.

§ 9.112 [Reserved.]

SUBPART B—DATA AND COPYRIGHTS

1. Sections 9.203 and 9.204–2 (f) have been revised as follows:

§ 9.203 *Contract clauses; general.* In any contract to be performed in the United States, its Territories, or possessions, or Puerto Rico in which data is specified to be delivered, insert, in accordance with § 9.202–2, one of the clauses of §§ 9.203–1 or 9.203–2, as appropriate, except that such clauses shall not be used in contracts coming within the provisions of §§ 9.204–2, 9.204–3 and 9.205, nor in contracts to be performed outside the United States, its Territories, or possessions, or Puerto Rico.

§ 9.204 *Contract clauses; special.*

§ 9.204–2 *Production of motion pictures.* * * *

(f) Paragraphs (c) and (d) of this section are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract: *Provided*, Such incorporated material is identified by the Contractor at the time of delivery of such work.

2. Section 9.206 has been added providing a Technical Information Clause for use in contracts to be performed outside the United States. Section 9.206, as added, reads as follows:

§ 9.206 *Contracts to be performed outside the United States.* (a) Except as otherwise provided in §§ 9.204–2, 9.204–3, or 9.205, the clause set forth below shall be included in all contracts under which (1) technical information including reports, drawings, blueprints or other data is specified to be delivered to the Government, and (2) the work is to be performed outside the United States, its Territories, its possessions, or Puerto Rico, regardless of the place of delivery.

TECHNICAL INFORMATION

The Government may duplicate, use, and disclose in any manner for its governmental purposes, including delivery to other governments for the furtherance of mutual defense of the United States Government and such other governments, all or any part of the technical information including reports, drawings, blueprints, and other data specified to be delivered by the Contractor to the Government under this contract.

(b) The above clause may be modified by substituting "the United States Government" for "Government"; however, when the contractor is a foreign government, the above clause shall be modified by substituting "the United States Government" for "Government" and by substituting the name of the foreign government for "Contractor."

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 11—FEDERAL, STATE AND LOCAL TAXES

SUBPART D—CONTRACT CLAUSES

Section 11.401 has been revised to include in § 11.401–1 the Federal, State, and Local Taxes clause conforming to that appearing in GSA Regulation 1–II–209.03, dated October 8, 1957, and in 11.401–2 on alternate clause for use in certain negotiated fixed-price contracts where the standard clause is inappropriate. § 11.401, as revised, reads as follows:

§ 11.401 *Fixed-price type contracts.*

§ 11.401–1 *Clause for advertised and certain negotiated contracts.* The following clause shall be inserted in (a) all formally advertised contracts and (b) negotiated fixed-price type contracts where the contracting officer is satisfied that the contract price, by virtue of competition or otherwise, excludes contingencies for State and local taxes.

FEDERAL, STATE, AND LOCAL TAXES

(a) As used throughout this clause, the term "tax inclusive date" means the date of negotiated contracts and the date set for the opening of bids for contracts entered into through formal advertising. As to additional supplies or services procured by modification to this contract, the term "tax inclusive date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all Federal, State, and local taxes and duties in effect and applicable to this contract on the tax inclusive date, except taxes (other than Federal transportation taxes) from which the Government, the Contractor, or the transactions or property covered by this contract are then exempt. Unless specifically excluded, duties are included in the contract price, and, if freight is included in the contract price, Federal transportation taxes are likewise included.

(c) (1) If the Contractor is required to pay or bear the burden—

(i) Of any tax or duty, which either was not to be included in the contract price pursuant to the requirements of paragraph (b), or was specifically excluded from the contract price by a provision of this contract, or

(ii) Of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price;

or of any interest or penalty thereon, the contract price shall be correspondingly increased: *Provided*, That the Contractor warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise: *And provided further*, That lia-

bility for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or its failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (c) shall set forth the amount thereof as a separate item and shall identify the particular tax involved.

(4) Nothing in this paragraph (c) shall be applicable to social security taxes; net income taxes; excess profit taxes; capital stock taxes; Federal transportation taxes, except changes in the rate thereof, including repeal, pertaining to shipments from the Contractor to the Government; unemployment compensation taxes; or any State and local taxes, except those levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract, including gross income taxes, gross receipts taxes, sales and use taxes, excise taxes, or franchise or occupation taxes measured by sales or receipts from sales.

(5) No adjustment of less than $100 shall be made in the contract price pursuant to this paragraph.

(d) Unless there does not exist any reasonable basis to sustain an exemption, the Government agrees upon request of the Contractor, without further liability except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from (i) any Federal tax, which the Contractor warrants in writing was excluded from the contract price, or (ii) any State or local tax: *Provided*, That evidence appropriate to establish exemption from duties will be furnished, and Government bills of lading will be issued, only at the discretion of the Contracting Officer. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price.

(e) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes and duties that reasonably may result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees.

§ 11.401–2 *Alternate clause for certain negotiated contracts.* The following clause shall be inserted in all negotiated fixed-price contracts where the clause set forth in § 11.401–1 is not used.

FEDERAL, STATE, AND LOCAL TAXES

(a) As used throughout this clause, the term "tax inclusive date" means the date of this contract. As to additional supplies or services procured by modification to this contract, the term "tax inclusive date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all Federal, State, and local taxes, and duties, in effect and applicable to this contract on the tax inclusive date, except taxes (other than Federal transportation taxes), from which the Government, the Contractor, or the transactions or property covered by this contract are then exempt. Unless specifically excluded, duties are included in the contract price, and, if freight is included in the contract price, Federal transportation taxes are likewise included.

(c) (1) If the Contractor is required to pay or bear the burden—

(i) Of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraph (b), or was specifically excluded from the contract price by a provision of this contract; or

(ii) Of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) Of any interest or penalty on any tax or duty referred to in (i) or (ii) above; the contract price shall be correspondingly increased: *Provided*, That the Contractor warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise: *And provided further*, That liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or its failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (c) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) Nothing in this paragraph (c) shall be applicable to social security taxes; income and franchise taxes, except such taxes as are levied on or are measured by sales or receipts from sales, or the Contractor's possession or use of Government-owned property; excess profits taxes; capital stock taxes; Federal transportation taxes, except changes in the rate thereof, including repeal, pertaining to shipments from the Contractor to the Government; unemployment compensation taxes; or property taxes, except such property taxes as are assessed either on special tooling, raw materials, components, work-in-process, or completed supplies, covered by this contract, or on the Contractor's interest in or use of Government-owned property supplied or acquired under this contract.

(5) No adjustment of less than $100 shall be made in the contract price pursuant to this paragraph (c).

(d) Unless there does not exist any reasonable basis to sustain an exemption, the Government agrees upon request of the Contractor, without further liability, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price: *Provided*, That evidence appropriate to establish exemption from duties will be furnished, and Government bills of lading will be issued, only at the discretion of the Contracting Officer. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price.

(e) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 12—LABOR

SUBPART C—EIGHT-HOUR LAW OF 1912 (OTHER THAN CONSTRUCTION CONTRACTS)

In § 12.303–1 minor language changes for clarification purposes have been made and the title revised to include the words "overtime compensation". Section 12.303–1, as revised, reads as follows:

§ 12.303 *Contract clauses.*

§ 12.303–1 *Clause for general use.* Except for those kinds of contracts referred to in § 12.303–2, the contract clause required by this subpart shall be as follows:

EIGHT-HOUR LAW OF 1912—OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U. S. Code 324–326) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35–45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall

be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

SUBPART F—WALSH-HEALEY PUBLIC CONTRACTS ACT

Sections 12.601, and 12.602 have been revised to reflect the DoD policy that findings of the Secretary of Labor with respect to a firm found ineligible as a "manufacturer" or "regular dealer," be extended to transactions of $10,000 or less. § 12.604 has been revised to conform to the revised Standard Form 32. Sections 12.601, 12.602 and 12.604, as revised, read as follows:

§ 12.601 *Statutory requirement.* In accordance with the requirement of the Walsh-Healey Public Contracts Act (Act of June 30, 1936, as amended; 41 U. S. Code 35–45), all contracts entered into by any Department for the manufacture or furnishing of supplies in any amount exceeding $10,000 (a) will be with manufacturers or regular dealers, and (b) shall incorporate by reference the representations and stipulations required by said Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

§ 12.602 *Applicability.*

§ 12.602–1 *General.* The requirement set forth in § 12.601 applies to contracts for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the geographic limits of the continental United States, Alaska, Hawaii, Puerto Rico, Virgin Islands, or the District of Columbia, and which exceed or may exceed $10,000 in amount.

§ 12.602–2 *Department of Labor regulations and interpretations.* Pursuant to the Walsh-Healey Act, the Secretary of Labor has issued detailed regulations and interpretations as to the coverage of said Act, and exemptions and procedures thereunder. These regulations and interpretations are compiled in a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations." In addition to the interpretations stated in that document, attention is directed to an opinion of the Department of Labor that contracts which are originally $10,000 or less, but are subsequently modified to increase the price to an amount in excess of $10,000, are subject to the Walsh-Healey Act; and that contracts in an amount exceeding $10,000 which are subsequently modified to a figure of $10,000 or less, are not subject to said Act with respect to work performed after such modification if modification is effected by mutual agreement.

§ 12.604 *Contract clause.* The contract clause required by this Subpart F shall be as follows:

WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U. S. Code 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

SUBPART H—NONDISCRIMINATION IN EMPLOYMENT

Section 12.802 has been revised to read as follows:

§ 12.802 *Basic requirement.* Contracts entered into by the Departments, except as set forth in § 12.804, shall contain the following clause:

NONDISCRIMINATION IN EMPLOYMENT

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion/or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 13—GOVERNMENT PROPERTY

SUBPART D—INDUSTRIAL FACILITIES

A new paragraph (d) has been added to § 13.402, as follows:

§ 13.402 *Separate facilities contract.* Industrial facilities shall be provided only under a facilities contract separate from any related contract for supplies or services, except that industrial facilities may be provided under suitable clauses in a supply or service contract which incorporates the applicable provisions of this Subpart D.

(a) When the cumulative total acquisition cost (actual or estimated) of the industrial facilities provided to a contractor at one plant or general location does not exceed $50,000;

(b) When the contract is for the performance of construction work;

(c) When the contract is for the performance of work within establishments or installations operated by the Government; or

(d) When the contract is for the performance of services, involving the operation of a Government-owned plant or installation, for a specified period of time, and the facilities provided are to be used only in connection with such contract.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 16—PROCUREMENT FORMS

SUBPART B—FORMS FOR NEGOTIATED PROCUREMENT

Section 16.202 has been revised as follows:

§ 16.202 *Negotiated contracts (DD Forms 351, 351–1, and 351–2).*

(a) DD Forms 351 (Negotiated Contracts) (Cover Sheet), 351–1 (Schedule) and 351–2 (Certificate) (Signature Page) are authorized for use in entering into negotiated cost reimbursement type and fixed-price type contracts except: (1) those contracts for which DD Forms 746, 746–1, and 746–2 are prescribed by § 16.203; (2) those procurements for which purchase order forms are prescribed by Subpart C of this part; (3) contracts for the construction, alteration or repair of buildings, bridges, roads or other kinds of real property; and (4) those procurements for which special forms are prescribed by Subpart E of this part. Standard Form 36 (Continuation Sheet) may be used in lieu of DD Form 351–1 (Schedule). These forms may be used regardles of dollar amount, but will not be used generally in procurements amounting to less than $5,000.

(b) These forms will be used with appropriate General Provisions as prescribed by this Subchapter or Departmental procedures (see §§ 16.204 and 16.205).

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

SUBPART C—PURCHASE AND DELIVERY ORDER FORMS

Section 16.303–2 (e) has been revised as follows:

§ 16.303 *Order for supplies or services (DD Forms 1155, 1155r, 1155c, and 1155s).*

§ 16.303–2 *Conditions for use.* * * *

(e) DD Form 1155c (Continuation Sheet) or Standard Form 36 (Continuation Sheet) shall be used if additional space is required, as provided by Departmental procedures.

(R. S. 161, secs. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

In § 30.3 *Appendix C—Manual for control of Government property in possession of non-profit research and development contractors,* paragraph 207.5 has been revised to provide for the maintenance of summary stock records in lieu of individual property records for those items of plant equipment having a value of less than $500 each. Paragraph 207.5, as revised, reads as follows:

207.5 *Records of plant equipment.* (a) Individual records of each item of plant equipment shall be maintained unless summary stock records are maintained as provided in (b) below. The following information shall be available from such records.

(i) Name and address of contractor.

(ii) Name and address of manufacturer of the plant equipment item.

(iii) Model number of the plant equipment item.
(iv) Year built or acquired.
(v) Serial number.
(vi) U. S. Government identification number.
(vii) Description and classification of the item.
(viii) Acquisition reference and date.
(ix) Disposition reference and date.
(x) Contract number under which acquired.
(xi) Cost (F. O. B. Manufacturer).

(b) Summary stock records may be maintained in lieu of individual property records for those items of plant equipment having a value of less than $500 each when designated by the contract administrator in accordance with departmental procedures. Full consideration should be made of the contractor's existing property control system. The following information shall be available from such records:
(i) Name and address of contractor.
(ii) Description and classification of the item.
(iii) Acquisition reference and date.
(iv) Disposition reference and date.
(v) Contract number under which acquired.
(vi) Cost (F. O. B. Manufacturer).
(vii) Quantity received.
(viii) Quantity transferred or disposed of as authorized in par. 203 (f) above.
(ix) Balance on hand.

In addition, where appropriate as determined by the contract administrator, the serial number or the U. S. Government identification number for each item shall be recorded in a permanent manner on the summary stock record and upon disposition a line drawn through the appropriate number.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

G. C. BANNERMAN,
Director for Procurement Policy, Office of the Assistant Secretary of Defense (Supply and Logistics).

MAY 21, 1958.

[F. R. Doc. 58-3941; Filed, May 26, 1958; 8:47 a. m.]

[Amdt. 29]

MISCELLANEOUS AMENDMENTS

The following miscellaneous amendments are made to this subchapter:

With one exception the major changes represent action taken in accordance with the recommendations in the Thirteenth Report (H. Rept. No. 1168, dated August 14, 1957) of the Military Operations Subcommittee of the House Committee on Government Operations. Section 2.201 (c) (16) has been promulgated in response to a recommendation in Subcommittee Proceedings No. 3, issued June 15, 1957, by the Subcommittee for Special Investigations of the House Committee on Armed Services (see Revision No. 27, dated 2 January 1958, for other action on this Report).

PART 1—GENERAL PROVISIONS

SUBPART C—GENERAL POLICIES

1. Section 1.307 has been revised to provide for (i) written affirmative determinations of prospective contractor responsibility to be retained in contract files, (ii) assurance of availability of necessary facilities, (iii) limitations to discourage the practice of multiple bidding, (iv) affidavits where necessary to prevent practices prejudicial to fair and open competition, and (v) consideration of existing delinquencies in evaluating ability to comply with required delivery schedules. Section 1.307-1 has been revised to stress the necessity for prompt execution of surveys and to provide for verification of information where appropriate. Section 1.307-2 has been revised to insure adequate documentation of contractor performance history. Section 1.307, as revised, reads as follows:

§ 1.307 *Responsible prospective contractor.* Prior to the award of any contract for supplies or services, the contracting officer shall make an affirmative determination that the prospective contractor is responsible. Affiliated concerns (see § 2.201 (c) (17)) shall be considered as separate entities in determining whether any one of them is a responsible prospective contractor (but see Subpart G of this part with respect to status as a small business concern). This determination shall be in writing for all contracts (except those of $2,500 or less, utilities contracts, and orders under existing contracts), and may be included in a duplicate signed copy of the Statement and Certificate of Award (Standard Form 1036) or in any other document required for the contract file, or may be separately prepared. In any case, such written determination signed by the contracting officer shall be retained in the contract file. A responsible contractor is one which meets all of the requirements set forth below:

(a) Is a manufacturer, construction contractor, or regular dealer, if the contract or order calls for supplies (see § 1.201-9);

(b) Has adequate financial resources, or ability to secure such resources;

(c) Has the necessary experience, organization, and technical qualifications, and has or can acquire the necessary facilities (including probable subcontractor arrangements) to perform the proposed contract (where a bidder is proposing to use the facilities of an affiliate or of a concern other than the bidder, all existing business arrangements, whether firm or contingent, for the use of such facilities shall be considered in determining the ability of such bidder to comply with the required delivery or performance schedule);

(d) Is able to comply with the required delivery or performance schedule, taking into consideration all existing business commitments (contractors who are seriously delinquent in current contract performance, when the number of contracts and the extent of delinquencies of each are considered, shall, in the absence of evidence to the contrary or compelling circumstances, be presumed to be unable to fulfill this requirement (d));

(e) Has a satisfactory record of performance, integrity, judgment, and skills; and

(f) Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Where it is considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition or for other reasons, prospective contractors may be required to submit affidavits concerning any of the requirements enumerated in paragraphs (a) through (f) of this section, and company ownership and control (but see § 2.201 (c) (17)).

§ 1.307-1 *Pre-award survey.* (a) A pre-award survey is a qualification check to determine that the prospective contractor is responsible. Such a survey need not cover all of the requirements of § 1.307 but may be limited to those requirements concerning which information available to the contracting officer is insufficient to support a determination or requires verification or further analysis. Preferably the survey should be made by technical and financial specialists in the appropriate fields, and may include an "on the spot" check of the facilities of the prospective contractor. Surveys shall be made promptly so as to avoid delays in making awards.

(b) Except as provided in paragraph (c) of this section, the contracting officer shall request a pre-award survey in each procurement unless he has sufficient information to enable him to determine that the prospective contractor meets all the applicable requirements of § 1.307.

(c) Generally, a pre-award survey will not be required when:

(1) The purchase is to be made under a Federal Supply Schedule;

(2) The purchase is to be made under an existing indefinite delivery type contract;

(3) The supplies are off-the-shelf items to be obtained from a regular dealer or manufacturer; or

(4) The dollar amount of the procurement is not sufficient to justify the cost of a pre-award survey, unless the contracting officer has reason to believe that the prospective contractor may not be responsible.

§ 1.307-2 *Experience data.* (a) The Military Departments are authorized to maintain such records and experience data as may be deemed desirable for the guidance of contracting officers in the placing of new procurements. In making use of such materials, contracting officers shall assure themselves that the information contained therein is current. The Departments are encouraged to exchange and confer concerning such records and experience data to the extent that the information contained therein will be mutually useful.

(b) Each purchasing office shall maintain appropriate records to insure the availability of contractor performance history on contracts which it has placed previously. Special attention shall be paid to, and records in more complete detail shall be maintained on (1) contractors who have indicated by their past actions that the character of performance on contracts is questionable, (2) new contractors whose reliability has not been established, and (3) contractors whose reputation indicates the necessity for vigilance on the part of the contracting officer.

2. Section 1.311 has been included to provide for more complete documenta-

tion of contract files. Section 1.311 reads as follows:

§ 1.311 *Records of contract actions.* Each contract file shall contain documentation of actions taken with respect to each contract, including final disposition. To the extent that retained copies of documents do not represent all actions taken, suitable memoranda or a summary statement of such undocumented actions shall be prepared promptly and be retained in the contract file in chronological order.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 2—PROCUREMENT BY FORMAL ADVERTISING

SUBPART B—SOLICITATION OF BIDS

A requirement has been added to § 2.201 (a) which provides that the Invitation for Bids shall contain a reminder of the need for full, accurate, and complete information and of the penalty for making false statements. Section 2.201 (c) has been amplified in subparagraph (xvi) to stipulate a minimum bid acceptance period to discourage manipulation of bid option periods, in subparagraph (xvii) to define the term "affiliate" in the bid form, and in subparagraph (xviii) to require designation of producing locations, including exact street address and ownership of producing facilities. Section 2.201, as revised, reads as follows:

§ 2.201 *Preparation of forms.* The form or forms to be used in the solicitation of bids (see Part 16, Subpart A, of this subchapter) should contain substantially the following information and any other information required by procedures prescribed by each respective Department.

(a) *Invitation for bids.* (1) Invitation number.

(2) Name and address of issuing activity.

(3) Date of issuance.

(4) Date, hour, and place of opening.

(5) Bids must set forth full, accurate, and complete information as required by this invitation for bids (including attachments). The penalty for making false statements in bids is prescribed in 18 U. S. C. 1001. Pending revision of the bid forms, the foregoing statement shall be included either on the face of the Invitation for Bids in bold type or attached thereto in such a manner as to insure its receiving bidders' attention. In determining the completeness and accuracy of the information furnished by bidders on their bid forms, the provisions of § 2.404 relative to minor informalities or irregularities in bids shall be considered.

(b) *Bid.* Bid blanks are to be filled in by the bidder, and each bid is to be executed in accordance with instructions to bidders.

(c) *Schedule.* (1) Number of pages.

(2) Requisition (or other purchase authority), appropriation, and accounting data.

(3) Discount provisions (including the removal of or changes in standard discount provisions whenever it is expected that prompt-payment discounts cannot be taken according to a time schedule set forth in the printed form).

(4) Quantity of supplies or services to be furnished under each item, and any provision for quantity variation.

(5) Description of supplies or services to be furnished under each item, such description to be in accordance with the provisions of § 1.305 relating to specifications, and § 2.201 (d) relating to availability and identification of specifications, and with procedures prescribed by each respective Department.

(6) Whenever specifications require prior testing and qualification of products, the right to reject bids offering products which do not meet this requirement of prior testing and qualification must be expressly reserved either in the specification itself or in the Schedule (see § 2.505–2).

(7) Time, place, and method of delivery (see § 1.306 of this subchapter).

(8) Permission, if any, to submit telegraphic bids.

(9) Permission, if any, to submit alternative bids, including alternative materials or designs.

(10) Requirement, in the case of advertising for the construction of Naval vessels, that the bidder file with his bid the estimates on which the bid is based.

(11) Preservation, packaging, packing, and marking requirements, if any.

(12) Place, method, and conditions of inspection.

(13) Bond and surety requirements, if any.

(14) Any authorized special provisions relating to such matters as progress payments, patent licenses, liquidated damages, profit limitations, etc.

(15) Any authorized special provisions relating to Government-furnished property proposed to be furnished for the performance of the contract; and, in addition, a provision that if the bidder plans to use, in performing the work bid upon, any items of Government property in the bidder's possession under a facilities contract or other agreement independent of the Invitation for Bids, the bidder shall so state in the bid, and upon request of the contracting officer, submit evidence that a facilities contract of other separate agreement authorizes the bidder to use each item of such Government property for performing the work bid upon.

(16) When considered necessary by the contracting officer, a requirement that all the bids must allow a period for acceptance by the Government of not less than a minimum period stipulated in the Invitation for Bids, and that bids offering less than the minimum stipulated acceptance period will be rejected. The minimum period so stipulated should be no more than that reasonably required for evaluation of bids and other pre-award processing. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the Invitation for Bids:

Bid acceptance period. Bids offering less than _____ days for acceptance by the Government from the date of opening will be considered nonresponsive and will be rejected.

(17) When considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition (see §§ 1.307 of this subchapter and 2.403), a requirement that each bidder submit with its bid an affidavit concerning its affiliation with other concerns. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the Invitation for Bids:

Affiliated bidders. (a) Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit containing information as follows:

(i) Whether the bidder has any affiliates;

(ii) The names and addresses of all affiliates of the bidder; and

(iii) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

The bid of a bidder who fails to submit such an affidavit will be considered nonresponsive and will be rejected.

(18) When it is reasonably anticipated that producing facilities will be required in the performance of the contract, a requirement that all bids contain the following information concerning the principal producing facilities which will be used in the performance of any resulting contract:

(i) Exact location, including state, city, street, number, etc. (if such designation of principal producing facilities is not feasible, explain fully); and

(ii) Names and addresses of owner and operator, if other than bidder.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

Section 2.403 has been revised to reject conditional or qualified bids, especially those resulting from multiple bidding practices. Section 2.403, as revised, reads as follows:

§ 2.403 *Rejection of bids.* Where it is determined after opening but prior to award that the requirements of § 2.201 (d) have not been met, the invitation for bids shall be cancelled. Any bid which does not, when considered with the Invitation for Bids, sufficiently describe the item being offered, or which does not otherwise conform to the essential requirements of the Invitation for Bids, shall be rejected (but see § 2.404). Where a bidder conditions or qualifies its bid by stipulations which modify the requirements of the invitation, such bid shall be rejected as being nonresponsive. An example of such a nonresponsive bid is one in which the bidder stipulates that its bid is to be considered only if prior to the date of award the bidder receives (or does not receive) award under a separate procurement being conducted. All bids may be rejected by the contracting officer (a) when rejection is in the interest of the Government, or (b) when he finds

in writing that the bids are not reasonable, or were not independently arrived at in open competition, or are collusive, or were submitted in bad faith: *Provided*, That, if negotiation is to be used after any such rejection of all bids, the requirements of § 3.215 must be satisfied. The originals of all rejected bids, and any written findings with respect to rejection, shall be preserved with the papers relating to the proposed purchase. Reports of possible violations of the antitrust laws or of any other Federal criminal statutes relating to procurement shall be made by each respective Department in accordance with procedures prescribed by that Department: *Provided*, That any evidence of bids not independently arrived at shall be forwarded to the Department of Justice.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 7—CONTRACT CLAUSES

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

Paragraphs (d) (5) of the clause in § 7.106–1, (h) of the clause in § 7.106–2, and (d) (5) of the clause in § 7.106–3 have been amended by changing the cross-reference from paragraph "(b)" to paragraph "(c)" therein. Paragraphs (d) (5) of the clause in § 7.106–1, (h) of the clause in § 7.106–2, and (d) (5) of the clause in § 7.106–3, as amended, read as follows:

§ 7.106 *Price escalation clauses (established prices).*

§ 7.106–1 *Escalation clause for basic steel, aluminum, brass, bronze or copper mill products.* * * *

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising).

(2) No unit price shall be increased by an amount greater than the amount of the increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed _____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, but if the Contractor's request for adjustment is received by the Contracting Officer more than ten days after the effective date of the increase in the Contractor's applicable rate, no adjusted unit price shall be effective earlier than the date of receipt by the Contracting Officer of such request.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

§ 7.106–2 *Escalation clause for nonstandard steel items.* * * *

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered: *Provided, however*, That in case the failure of the Contractor to make delievry of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

§ 7.106–3 *Escalation clause for standard supplies.* * * *

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed _____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

PART 10—BONDS AND INSURANCE

Section 10.103–1 has been revised to require submission of a performance bond within the time specified in the contract, or, after the expiration of a 10-day grace period, the initiation of termination for default procedures. Section 10.103–1, as revised, reads as follows:

§ 10.103 *Performance bonds.*

§ 10.103–1 *Performance bonds in connection with contracts other than construction contracts.* The extent to which performance bonds will be required in connection with contracts other than construction contracts shall be in accordance with procedures prescribed by each respective Department, except that the requirement of such a bond shall not be waived when an Invitation for Bids requires a performance bond. Conversely, a performance bond shall not be required unless the Invitation for Bids requires such a bond, or the requirement of such a bond is in the interest of the Government and not prejudicial to the other bidders. Whenever a performance bond is required:

(a) The penal sum thereof shall be in an amount deemed adequate by the contracting officer for the protection of the Government; and

(b) It shall be furnished by the contractor within the time specified in the contract; and if it is not so furnished, the contracting officer shall notify the contractor that if the bond is not furnished within 10 days after receipt of such notice, the contract shall be terminated pursuant to paragraph (a) (ii) of the "Default" clause of § 7.103–11.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202)

G. C. BANNERMAN,
Director for Procurement Policy, Office of the Assistant Secretary of Defense (Supply and Logistics).

MAY 21, 1958.

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Chapter XVII—Federal Civil Defense Administration

PART 1710—FEDERAL DISASTER ASSISTANCE

AUTHORITY: §§ 1710.1 to 1710.17 issued under sec. 5, 64 Stat. 1110, as amended; 42 U. S. C. 1855d. E. O. 10427, 18 F. R. 407, 3 CFR, 1953 Supp., E. O. 10737, 22 F. R. 8789, 3 CFR, 1957 Supp.

§ 1710.1 *Purpose.* The purpose of this part is to prescribe the standards and procedures to be followed in the providing of Federal assistance to supplement the efforts and available resources of States and local governments in alleviating the damage, hardship or suffering caused by major disasters, under Public Law 875, 81st Congress, as amended (42 U. S. C. 1855–1855g), Executive Order

10427, dated January 16, 1953, and Executive Order 10737, dated October 29, 1957.

§ 1710.2 *Definitions.* Except as otherwise stated, the following terms shall have the following meanings when used in the regulations in this part:

(a) *Act.* The act of September 30, 1950, entitled "An Act To Authorize Federal Assistance to State and Local Governments in Major Disasters and for Other Purposes" (64 Stat. 1109, 42 U. S. C. 1855–1855g), as amended, popularly known as the "Federal Disaster Act."

(b) *Major disaster.* Means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments in alleviating the damage, hardship, or suffering caused thereby, and respecting which the Governor of any State (or the Board of Commissioners of the District of Columbia) in which such catastrophe may occur or threaten certifies the need for disaster assistance under the act, and shall give assurance of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies, for the same or similar purposes with respect to such catastrophe;

(c) *Damage.* Includes suffering and hardship;

(d) *United States.* Includes the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands;

(e) *State.* Any State in the United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands;

(f) *Local Government.* Any county, city, village, town, district, or other political subdivision of any State, or the District of Columbia;

(g) *Federal Agency.* Any department, independent establishment, government corporation, or other agency of the Executive Branch of the Federal Government excepting, however, the American National Red Cross;

(h) *Governor.* The Chief Executive of any State;

(i) *Administrator.* The Federal Civil Defense Administrator;

(j) *Regional Administrator.* A Regional Administrator of the Federal Civil Defense Administration;

(k) *Federal assistance.* Assistance which is supplementary to relief afforded by State, local, or private agencies, and not in substitution therefor.

(l) *Termination.* Termination, as used in this part, means completion of all physical work to be accomplished and therefore the end of the need for Federal assistance.

§ 1710.3 *Policy.* (a) It is the policy of the Federal Civil Defense Administration to provide an orderly and continuing means of supplemental assistance by the Federal Government to States and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters.

(b) It is also the policy to foster the development of State and local organizations and plans for coping with major disasters, and to provide advice and guidance to States and local governments on organization and planning to meet the effects of major disasters and to assure the maximum application of this experience in preparing Federal, State and local governments to meet the effects of enemy attack.

§ 1710.4 *Requests for Federal assistance.* (a) Upon the occurrence or threat of a catastrophe within a State which, in the opinion of its Governor (or the Board of Commissioners of the District of Columbia) constitutes, or will constitute, a major disaster requiring supplementary Federal assistance, the Governor shall present to the Administrator, through the appropriate Regional Administrator, a request for Federal assistance. The request shall include assurance of expenditure of a reasonable amount of the funds of State, local governments, or other agencies therein, for alleviating damage resulting from such disaster. In addition, the request shall contain the following information and data:

(1) An estimate of the severity and extent of damage resulting from the disaster and the total funds, personnel, equipment, and material or other resources required to alleviate such damage.

(2) A statement of action taken or recommended to be taken by the State legislature or local legislative and governing authorities with regard to the disaster.

(3) An estimate of State and local funds, personnel, equipment and material or other resources, available and to be made available, to alleviate such damage.

(4) A statement of the extent and nature of Federal assistance needed, including an estimate of the minimum Federal funds, personnel, equipment, material or other resources necessary to supplement the efforts and available resources of the State in alleviating the damage.

(b) When the request of a Governor for Federal assistance is solely for agricultural relief purposes and such assistance is to be furnished by virtue of authority other than the act, and the exercise of such other authority is dependent upon the existence of a major disaster declared pursuant to the act, the following shall apply:

(1) The Governor shall forward a copy of his request for Federal assistance to the Secretary of Agriculture at the same time he forwards his request to the Regional Administrator as provided in this section.

(2) The Secretary of Agriculture will conduct an investigation relative to the propriety of declaring a major disaster in accordance with the delegation of authority from the Administrator for such purposes, and submit to the President, through the Federal Civil Defense Administrator, his recommendation thereon.

§ 1710.5 *Processing the request of a Governor for a declaration of a "major disaster".* (a) The Regional Administrator shall forward the Governor's request, together with his report and recommendations, to the Administrator.

(b) The Administrator shall forward the Governor's request to the President, together with his recommendation as to action by the President thereon. In formulating his recommendation, the Administrator shall consider:

(1) Concerning a declaration:

(i) The severity and extent of the disaster;

(ii) The reasonableness of State and local efforts in relation to the severity of the disaster, the resources and funds available to State and local governments for the alleviation of damage resulting from the disaster, and the operational disaster plans of the State and local governments;

(iii) The extent and nature of Federal assistance requested;

(iv) The report and recommendation of the Regional Administrator;

(v) Any other available information.

§ 1710.6 *Initiation of Federal assistance.* Upon a declaration by the President that a major disaster exists, the Administrator will immediately initiate action to provide Federal assistance in accordance with such declaration, allocation of funds by the President, applicable law and this part. The determination of the President, with respect to the declaration of a major disaster, will be promptly transmitted to the Governor of the State concerned.

§ 1710.7 *Allocations to the Administrator.* Upon allocation of funds by the President to the Administrator to provide assistance to State and local governments in a major disaster, funds so allocated may be reallocated by the Administrator: (a) (1) Upon a showing of need, to the State and local governments for utilization for the purposes of the act; (2) for providing direct assistance to the States for the purposes set forth in section 3 of the act; and (b) for reimbursement of any Federal agency for any of its authorized expenditures directed by the Administrator pursuant to sections 3 and 7 in connection with a major disaster: *Provided, however,* That such reimbursement of Federal agencies shall be made in accordance with the regulations of the Administrator and subject to the concurrence of the Director of the Bureau of the Budget.

§ 1710.8 *Federal-State Disaster Assistance Agreements.* (a) Upon the declaration of a major disaster, a Federal-State Disaster Assistance Agreement will be executed by the Governor (or his authorized representative) acting for the State and the appropriate Regional Administrator, acting for the Federal Government. Such Agreement shall provide for the manner in which Federal assistance is to be made available and contain the assurance of the State that a reasonable amount of the funds of the State, local governments or other agencies therein will be expended in alleviating damage caused by the disaster. The Agreement will also contain such other terms and conditions consistent with the provisions of the act, Executive Orders

10427 and 10737, and this part, as the Administrator may require, including but not limited to a clause which contains the requirements set forth in § 1710.16.

(b) The Agreement may provide for assistance to be furnished by other Federal agencies, financial assistance to be furnished for protective and other work for the protection of life and property, debris and wreckage clearance, and emergency repairs and temporary replacement of essential public facilities of local governments, or other assistance to be provided pursuant to the act and in accordance with this part.

(c) In the event the President has allocated funds to the Administrator for use in connection with a major disaster, every Federal-State Disaster Assistance Agreement shall contain the following provision:

Federal assistance under this Agreement and applicable law and regulations shall not exceed the sum of $_____. This sum includes the amount of $_____ to be reserved by the Administrator for such reallocations as he deems proper, including such amount as he may determine necessary for the reimbursement of other Federal agencies for their expenditures in connection with furnishing assistance in this disaster. Not more than $_____ shall be available for transfer to the State under this Agreement, and project applications submitted under this Agreement and FCDA regulations will not be approved in excess of this amount.

(d) In the event funds are to be transferred to a State for disaster relief purposes under an allocation made by the Administrator, every Federal-State Disaster Assistance Agreement shall contain, and the State and its political subdivisions will agree to, the following provision:

In the event that a State or local government violates any of the conditions imposed upon disaster relief assistance under law, this Agreement or FCDA regulations, the Administrator will notify the State of said violation and the necessary corrective measures, and will notify the State that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected: *Provided*, That, if the Administrator, after such notice to the State, is not satisfied with the corrective measures taken to comply with his notification, the Administrator will notify the State that further financial assistance will be withheld for the project for which it has been determined that a violation exists, or for all or any portion of financial assistance which has or is to be made available to the State or local governments for the purpose of disaster relief assistance under the provisions of this Agreement, FCDA regulations and the act.

§ 1710.9 *Project applications.* (a) Federal financial assistance shall be provided on the basis of project applications submitted by the State and local governments and approved by the Regional Administrator pursuant to the Federal-State Disaster Assistance Agreement approved and in accordance with this part. The project application will provide the basis of a request for an advance or a reimbursement for such expenditure: *Provided*, That the total of all advances and requests for reimbursement shall not exceed the amount of financial assistance stipulated in the aforementioned agreement.

(b) Payments will be made directly to the State for its own use or for the use of the particular local government.

(c) If a project application is approved without change by the Federal Civil Defense Administration, signed copies thereof evidencing such approval shall be returned to the State.

(d) If FCDA's approval of the project application is made subject to revisions or additional conditions, the project application may be given provisional approval and returned to the State (and through the State to the political subdivision, if applicable) for consent to such revisions or additional conditions. If the State (and the political subdivision, if applicable) accepts such revisions or additional conditions, it shall so signify by signing and returning the project application.

(e) If disapproved, the project application shall be returned to the State with a statement of the reasons for such disapproval.

(f) Project applications shall be submitted not later than ninety days following the date of the President's declaration of a major disaster. If the circumstances of the disaster are such as to make an immediate detailed assessment of damage impossible, the Regional Administrator may extend this period provided that the extension does not conflict with the time limits established under § 1710.16: *Provided, however*, That if the project application is disapproved by the Regional Administrator, because of inadequacy of information, it may be resubmitted by the State within thirty days of the date of the return to the State: *And provided further*, That, if again disapproved by the Regional Administrator, it may be resubmitted, in writing, within thirty days of such disapproval through the Regional Administrator with any further justification for consideration by the Administrator.

(g) Every project application shall contain a certification by the Governor, or his authorized representative, that Federal financial assistance involved will be, or has been, expended in accordance with applicable law and regulations thereunder.

§ 1710.10 *Criteria of eligibility for financial assistance.* Federal financial assistance under Public Law 875 shall be limited to protective work and other work for the protection of life and property, debris and wreckage clearance, and emergency repairs and temporary replacement of essential public facilities of local governments, including provisions for temporary housing or emergency shelter.

(a) *Protective work.* In providing financial assistance for the performance on public or private lands of protective or other work essential to the preservation of life and property, the following criteria shall apply:

(1) When necessary to preserve life, protective and other work shall be limited to the minimum amount necessary to remove the immediate threats to health and safety.

(2) When necessary to preserve property, protective and other work shall be limited to the minimum amount necessary to prevent immediate damage to such property.

(b) *Debris and wreckage clearance.* In providing financial assistance for clearing of debris and wreckage, the following criteria shall apply:

(1) Clearing of debris and wreckage may be accomplished on public property which is essential to the immediate resumption of essential public services.

(2) Clearance of debris and wreckage may also be accomplished under this paragraph upon public or private property, when the public health or safety is endangered or threatened.

(c) *Emergency repairs and temporary replacements.* In providing financial assistance for making emergency repairs to and temporary replacements of public facilities of local governments which have been damaged or destroyed, the following criteria shall apply:

(1) Emergency repairs and temporary replacements shall be made only to those facilities the operation of which is essential to health, safety or welfare.

(2) Assistance in making emergency repairs or temporary replacements shall be limited to providing for the resumption of essential public services until such time as permanent repairs or replacements may be made, except when specifically authorized by the Administrator pursuant to subparagraph (3) of this paragraph.

(3) A Federal financial contribution toward the permanent replacement of a public facility, in lieu of and in an amount no greater than that estimated to be required for the temporary replacement or emergency repair, may be authorized where such permanent replacement will expeditiously permit the resumption of the essential public service provided by the facility.

(d) *Temporary housing or emergency shelter.* In providing assistance under this section for temporary housing or other emergency shelter for persons requiring such housing or shelter as a result of the disaster, the following criteria shall apply:

(1) Prior to provision of temporary housing or other emergency shelter, a determination of the need for same will be made by the Regional Administrator, after consultation and survey of available facilities by the Housing and Home Finance Agency, the American National Red Cross, and such officials of State and local governments as he deems appropriate.

(2) Assistance for temporary housing or emergency shelter shall be limited to the minimum required to provide shelter during such period of time as would be reasonably necessary to permit the construction or repair of permanent housing in the area, or relocation of displaced persons in permanent housing in unaffected areas.

§ 1710.11 *State action in connection with Federal assistance.* (a) The Governor of the State shall designate an appropriate State official, Board or Committee which shall review all project applications. In addition, the Governor (or

his designee) shall certify that the project application meets all the requirements and conditions of the Agreement, the act, the regulations thereunder, and such other terms established by the Administrator.

(b) Federal funds shall be controlled in accordance with accepted or prescribed methods of accounting, identification and administrative responsibilities. Representatives of the Federal Civil Defense Administration and the General Accounting Office shall have access during normal business hours to the books and records of the State, local governments, and other agencies relating to Federal financial assistance under the act.

(c) Procurement of work and services under project applications hereunder must comply with all statutes, regulations and ordinances covering procurement of such supplies and services by such State or the political subdivision thereof.

§ 1710.12 *Assistance rendered by Federal agencies.* (a) Upon the declaration of a major disaster, the Administrator may direct any Federal agency, and such Federal agency shall provide assistance to State and local governments by:

(1) Utilizing or lending its equipment, supplies, facilities, personnel and other resources, other than the extension of credit;

(2) Distributing through the American National Red Cross, or otherwise, medicine, food, or other consumable supplies;

(3) Donating or lending equipment and supplies surplus to the needs of the Federal Government in accordance with the provisions of § 1710.13;

(4) Performing on public or private lands protective and other work essential for the preservation of life and property, clearing debris and wreckage, making emergency repairs to, and temporary replacement of, public facilities of local governments damaged or destroyed in a major disaster.

(b) The Administrator will coordinate the activities of Federal agencies in providing disaster assistance and may direct any Federal agency to furnish such assistance as he determines appropriate.

(c) Assistance to be furnished by any Federal agency under paragraph (a) (4) of this section shall be subject to the same criteria of eligibility provided for under § 1710.10.

(d) Assistance under paragraph (a) of this section, when directed by the Administrator, shall not affect the authority of any Federal agency to provide disaster relief assistance independent of the act: *Provided*, Such disaster relief assistance by other Federal agencies shall be subject to the coordination of the Administrator.

§ 1710.13 *Federal assistance by loan or donation of Federal surplus property to the States.* (a) The States shall, when available, make maximum utilization of Federal surplus property.

(b) The Federal Government will donate or lend equipment and supplies determined to be surplus to the needs and responsibilities of the Federal Government, to States for use or distribution by them for the purposes of the act, including the restoration of public facilities damaged or destroyed in such disaster and the essential rehabilitation of individuals in need as a result of such major disaster. The loan or donation of such surplus property shall be made to the States upon the basis of a certification by the State that such property is usable and necessary for disaster relief purposes, and will be made in accordance with the procedures prescribed by the General Services Administration.

(c) The States may obtain information on the availability of surplus property from the State surplus property agency, or the State agency designated for such purposes under State law. Assistance and information with regard to property which may be usable or necessary for disaster relief purposes may also be available from the Regional Coordinator of Surplus Property of the Department of Health, Education and Welfare, or the appropriate FCDA Region.

(d) Property acquired by State and local governments under the Contributions Program of the FCDA, or which has been donated to the States for Civil Defense purposes pursuant to the FCDA Surplus Property Program, may be utilized by the States and local governments therein in combating the effects of major disasters. When property so utilized is consumed, damaged or destroyed, the State or local government may be eligible for Federal financial assistance to repair or replace such property: *Provided, however*, When such property is damaged, consumed, or destroyed in combating the effects of a major disaster, replacement by the State or local government may be waived by the FCDA.

(e) Surplus property which may be utilized in combating the effects of a major disaster may not be donated to the States for this purpose prior to the declaration of a major disaster: *Provided, however*, That for replacement purposes of property damaged, consumed, or destroyed in combating the effects of a major disaster, the State or local government may be eligible to receive donated surplus property for such purposes; or, in the discretion of the Administrator, Federal financial assistance for such replacement under this part or under the FCDA Contributions Program may be extended to such State or local government.

§ 1710.14 *The American National Red Cross.* The disaster relief capabilities of the American National Red Cross shall be utilized to the maximum extent. Where practical, the distribution of medicine, food, and other consumable supplies shall be made by the American National Red Cross in accordance with the Memorandum of Understanding between the Federal Civil Defense Administration and the American National Red Cross. Nothing contained herein shall be construed to limit or in any way affect the responsibilities of the American National Red Cross.

§ 1710.15 *Changes effective July 1, 1959.* (a) Effective July 1, 1959, Federal assistance under Public Law 875 in any State will be available only after the Governor of that State certifies that the total of State and local expenditures and obligations (or resources utilized) by the government of each State, local government thereof, or other agencies (over and above their normal expenditures) for disaster relief purposes exceeds an amount published annually by the Administrator as the minimum for that State in that disaster and for all disasters during the twelve-month period immediately preceding the request for assistance under Public Law 875.

(b) The Administrator, in unusual circumstances, or in disasters in which exceptional destruction and/or suffering and hardship have occurred, may waive in whole or in part this requirement.

§ 1710.16 *Time limits.* Federal assistance extended under the act shall terminate upon notice by the Administrator to the Governor of the State or upon the expiration of one year from the date of notification to the Governor of the President's determination that a major disaster exists, whichever is first, except that upon a showing of unusual circumstances, the Administrator, with the consent of the President, may extend this period: *Provided*, That, upon a showing of the need and with the recommendation of the Secretary of Agriculture, the Administrator may extend such termination dates, for such purposes and such periods of time as he may determine to be necessary, with respect to disaster relief assistance solely for agricultural purposes.

§ 1710.17 *Utilization of State and local agencies.* In carrying out disaster relief assistance under the Act and this part, any Federal agency is authorized to accept and utilize, with the consent of the State or local government, the services, personnel, materials and facilities of such State or local agency in connection with the disaster: *Provided, however*, Such utilization shall not be considered to make such services, personnel, materials, or facilities, Federal in nature, or to make the State, local governments or agencies thereof an arm or agent of the Federal Government.

Effective date. This part shall take effect upon the date of publication in the FEDERAL REGISTER.

Approved: May 13, 1958.

[SEAL] LEO A. HOEGH, *Administrator.*

[F. R. Doc. 58-3935; Filed, May 26, 1958; 8:45 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Defense Mobilization

DEFENSE MANPOWER POLICY

NOTICE OF REVOCATION

By virtue of the authority vested in me by Executive Order 10480 dated August 14, 1953, the following Defense Manpower Policies are hereby revoked:

Defense Manpower Policy No. 1, August 2, 1951, 16 F. R. 7576.
Defense Manpower Policy No. 2, August 2, 1951, 16 F. R. 7577.
Defense Manpower Policy No. 3, August 17, 1951, 16 F. R. 8213.
Defense Manpower Policy No. 5, April 2, 1952, 17 F. R. 2837.
Defense Manpower Policy No. 6, June 27, 1952, 17 F. R. 5764.
Defense Manpower Policy No. 7, August 14, 1952, 17 F. R. 7390.
Defense Manpower Policy No. 9, October 14, 1952, 17 F. R. 9095.
Defense Manpower Policy No. 10, November 29, 1952, 17 F. R. 10810.
Defense Manpower Policy No. 11, March 5, 1953, 18 F. R. 1240.

This revocation order is effective immediately.

Dated: May 22, 1958.

OFFICE OF DEFENSE MOBILIZATION,
GORDON GRAY,
Director.

[F. R. Doc. 58-3946; Filed, May 26, 1958; 8:48 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

NEW JERSEY INTRACOASTAL WATERWAY AND TRIBUTARIES; ST. FRANCIS RIVER, ARKANSAS

1. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.220 governing the operation of bridges over the New Jersey Intracoastal Waterway and tributaries is hereby amended prescribing paragraph (n) and changing paragraphs (c), (d), and (m) to govern the operation of the State Highway bridge on Route 72 over Manahawkin Bay between Ship Bottom and Manahawkin in order to relieve congestion of highway traffic during the summer months, to become effective on June 1, 1958, as follows:

§ 203.220 *New Jersey Intracoastal Waterway and tributaries, bridges.* * * *

(c) * * * Appurtenances unessential for navigation shall include but not be limited to fishing, outriggers, radio or television antennae, false stacks, and masts purely for ornamental purposes. Appurtenances unessential to navigation will not include flying bridges, sailboat masts, pile driver leads, spud frames on hydraulic dredges, or other items of equipment clearly necessary to the intended use of the vessel.

(d) * * *, except as provided in paragraphs (m) and (n) of this section * * *.

* * * * *

(m) The provisions of paragraph (d) of this section shall be applicable to the bridge of the Pennsylvania-Reading Seashore Lines, over Beach Thorofare at Atlantic City, N. J., only between the hours of 11:00 p. m. and 6:00 a. m. daily. Between the hours of 6:00 a. m. and 11:00 p. m. this bridge shall be opened upon signal from any vessel or craft desiring to pass at any time during the periods from 20 to 30 minutes past each hour, but may remain closed during such periods if no vessel or craft give such signal, provided that when once opened for the passage of any vessel or craft the said bridge shall remain open sufficiently long to permit the passage of all vessels or craft which may be engaged in passing or which may be presenting itself for passage. Between such hours (6:00 a. m. and 11:00 p. m.) this bridge shall not be opened except as provided for in this paragraph.

(n) On Saturdays, Sundays, and holidays from June 15 to September 14, 1958, between the hours of 10:00 a. m. and 6:00 p. m., except in emergencies, the lift span of the State Highway bridge on Route 72 over Manahawkin Bay between Ship Bottom and Manahawkin shall not be required to open, except at hourly intervals, for those craft waiting to pass through the draw, the time of this required bridge opening for the passage of the craft to be confined as much as possible to the interval between 5 minutes before the hour and 5 minutes past the hour.

[Regs., May 12, 1958, 823.01 (Manahawkin Bay, N. J.)—ENGWO] (Sec. 5, 28 Stat. 362; 33 U. S. C. 499)

2. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.560, governing the operation of drawbridges across the Mississippi River and tributaries where constant attendance of draw tenders is not required, is hereby amended prescribing regulations for the Chicago, Rock Island and Pacific Railroad Company bridge and the Arkansas State Highway bridges at and near Madison, Ark., changing paragraph (f) (28) and (30) and revoking paragraph (f) (29), as follows:

§ 203.560 *Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.* * * *

(f) *Lower Mississippi River.* * * *

(28) St. Francis River, Ark.; Arkansas State Highway bridge at Cody. At least 72 hours' advance notice required to be given to the Division Maintenance Superintendent, Division No. 1, Arkansas State Highway Department, Wynne, Arkansas. Whenever any vessel passing through this bridge intends to return through it within 72 hours and informs the draw tender of the probable time of its return, the draw shall be opened promptly on signal for the passage of the vessel on its return trip without further notice.

(29) St. Francis River, Ark. [Revoked.]

(30) St. Francis River, Ark.; Chicago, Rock Island and Pacific Railroad Company bridge at Madison, Arkansas State Highway bridge at Madison, Arkansas State Highway bridge near Madison, Cross County Road Improvement District No. 1 bridge at Parkin, Arkansas State Highway bridge at Marked Tree, St. Louis-San Francisco Railway Company bridge near Marked Tree, St. Louis-Southwestern Railway Lines bridge at Lunsford, Arkansas State Highway bridge at Lake City, St. Louis-Southwestern Railway Lines bridge at Bertig, St. Louis-San Francisco Railway Company bridge at West Kennett, St. Louis-Southwestern Railway Lines bridge at St. Francis. The draws need not be opened for the passage of vessels, and paragraphs (b) to (e), inclusive, of this section shall not apply to these bridges.

[Regs., May 12, 1958, 823.01 (St. Francis River, Ark.)—ENGWO] (Sec. 5, 28 Stat. 362; U. S. C. 499)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 58-3953; Filed, May 26, 1958; 8:49 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 1—GENERAL RULES OF PRACTICE

SUBPENAS

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 12th day of May A. D., 1958.

There being under consideration § 1.56 of the Commission's general rules of practice, and good cause appearing therefor: *It is ordered,* That § 1.56 be amended to read as follows:

§ 1.56 *Subpenas*—(a) *Requests; particularity.* Unless directed by the Commission upon its own motion, a subpena to compel a witness to produce documentary evidence will be issued only upon petition showing general relevance and reasonable scope of the evidence sought, which petition must also specify with particularity the books, papers, or documents desired, and the facts expected to be proved thereby: *Provided, however,* That for good cause shown, in lieu of a petition, the request for such a subpena may be made orally upon the record to the officer presiding at the hearing. A request for issuance of a subpena other than to compel the production of documentary evidence may be made either by letter (original only need be filed with the Commission) or orally upon the record to the officer presiding at the hearing. A showing of general relevance and reasonable scope of the evidence sought may be required and the subpena will be issued or denied accordingly.

(b) *Issuance.* A subpena may be issued by the Commission or by the officer presiding at the hearing, but only under the signature of the Secretary or of a member of the Commission.

It is further ordered, That this order shall become effective on June 30, 1958.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D. C., and by filing a copy with the Director, Division of the Federal Register.

(Secs. 12, 17, 24 Stat. 383, as amended, 385, as amended, secs. 204, 205, 49 Stat. 546, as amended, 548, as amended, sec. 304, 54 Stat.

933, sec. 403, 56 Stat. 285; 49 U. S. C. 12, 17, 304, 305, 904, 1003)

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 58-3944; Filed, May 26, 1958; 8:47 a. m.]

[Revised S. O. 562; Amdt. 10]

PART 97—ROUTING OF TRAFFIC

REROUTING OF TRAFFIC; APPOINTMENT OF AGENT

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 20th day of May A. D. 1958.

Upon further consideration of the provisions of Revised Service Order No. 562 (14 F. R. 2697), as amended (15 F. R. 3105; 8651; 16 F. R. 4551; 17 F. R. 4675; 18 F. R. 3048; 19 F. R. 2966; 20 F. R. 3685; 21 F. R. 3650; 22 F. R. 3653), and good cause appearing therefor:

It is ordered, That:

Section 97.562 *Rerouting of traffic; appointment of agent*, of Revised Service Order No. 562 be, and it is hereby, further amended by substituting the following paragraphs (a) and (d) hereof for paragraphs (a) and (d) thereof:

(a) Charles W. Taylor, Director, Bureau of Safety and Service, Interstate Commerce Commission, Washington 25, D. C., is hereby designated and appointed an Agent of the Interstate Commerce Commission and vested with authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever in his opinion an emergency exists whereby any railroad is unable to move traffic currently over its lines.

* * * * *

(d) Expiration date: This order shall expire at 11:59 p. m., May 25, 1959, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

It is further ordered, That this amendment shall become effective at 11:59 p. m., May 25, 1958; that a copy of this order and direction be served upon the State railroad regulatory bodies of each State, upon all common carriers by railroad subject to the Interstate Commerce Act, and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12. Interprets or applies secs. 1, 15, 24 Stat. 379, as amended; 49 U. S. C. 1, 15)

By the Commission, Division 3.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 58-3943; Filed, May 26, 1958; 8:47 a. m.]

PROPOSED RULE MAKING

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 249]

FORMS FOR CURRENT REPORTS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Securities and Exchange Commission has under consideration certain proposed amendments to Form 8-K (§ 249.308), which is the form prescribed for current reports filed pursuant to sections 13 and 15 (d) of the Securities Exchange Act of 1934.

The proposed amendments relate to Item 11 of the form which requires information in regard to matters submitted to a vote of security holders either at a meeting of such security holders or otherwise. One of the amendments pertains to paragraph (b) which calls for information in regard to the election of directors. The purpose of the amendment is to clarify this paragraph to indicate more clearly the information required thereby. Another amendment relates to Instruction 2 to the item, which has been construed by certain issuers not to require the furnishing of information in certain cases where it is the intention of the item and the instructions that such information be furnished.

The amendments are proposed pursuant to the Securities Exchange Act of 1934, particularly sections 13, 15 (d) and 23 (a) thereof. The text of the proposed item reads as follows:

Item 11. *Submission of Matters to a Vote of Security Holders.* If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. This item need not be answered as to procedural matters relating to the conduct of the meeting, or as to the selection or approval of auditors. This item need not be answered as to the election of directors or officers if (i) proxies for the meeting were solicited pursuant to Regulation 14, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected.

3. If the issuer has published a report containing all of the information called for by this time, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

All interested persons are invited to submit their views and comments on the proposed amendments, in writing, to the Securities and Exchange Commission, Washington 25, D. C., on or before June 20, 1958. Except where it is requested that such communications not be disclosed, they will be considered available for public inspection.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

MAY 20, 1958.

[F. R. Doc. 58-3937; Filed, May 26, 1958; 8:46 a. m.]

FEDERAL TRADE COMMISSION

[16 CFR Part 34]

[File No. 21-464]

NURSERY INDUSTRY

NOTICE OF HEARING AND OF OPPORTUNITY TO PRESENT VIEWS, SUGGESTIONS OR OBJECTIONS

In the matter of proposed amended trade practice rules for the Nursery Industry as promulgated June 27, 1956 (16 CFR Part 34).

Opportunity is hereby extended by the Federal Trade Commission to any and all persons, firms, corporations, organizations, or other parties, affected by or having an interest in the proposed amended trade practice rules for the Nursery Industry, to present to the Commission their views concerning said rules, including such pertinent information, suggestions, or objections as they may desire to submit, and to be heard in the premises. For this purpose, they may obtain copies of the proposed amended rules upon request to the Commission. Such views, information, suggestions, or objections may be submitted by letter, memorandum, brief, or other communication to be filed with the Commission not later than June 16, 1958. Opportunity to be heard orally will be afforded at the hearing beginning at 10 a. m., e. d. t., Monday, June 16, 1958, in Room 532, Federal Trade Commission Building, Pennsylvania Avenue at Sixth Street NW., Washington, D. C., to any persons, firms, corporations, organizations, or other parties who desire to appear and be heard. After due consideration of all matters presented in writing or orally, the Commission will proceed to final action on the proposed amended rules.

The industry for which these rules are proposed is composed of persons, firms, corporations, and organizations engaged in the sale, offering for sale, or distribution of all types of trees, small fruit plants, shrubs, vines, ornamentals, herbaceous annuals, biennials, and perennials, bulbs, corms, rhizomes, and tubers which are offered for sale or sold to the general public. Included are products propagated sexually or asexually and

whether grown in a commercial nursery or collected from the wild state. Such products are customarily used for outdoor planting. Not included are florists' or greenhouse plants solely for inside culture or use and annual vegetable plants. Likewise, gladiolus bulbs and corms are excluded inasmuch as they are covered by trade practice rules promulgated January 17, 1952.

The proceedings to amend and extend the existing trade practice rules for this industry were instituted pursuant to industry application and are directed to the maintenance of fair competitive conditions in the industry and the full protection of the purchasing public.

Issued: March 21, 1958.

By direction of the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 58-3945; Filed, May 26, 1958; 8:47 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. 570, Rev. Apr. 20, 1943, 1958; Supp. 185]

RIVERSIDE INSURANCE COMPANY OF AMERICA

TERMINATION OF AUTHORITY TO QUALIFY AS SURETY ON FEDERAL BONDS

MAY 21, 1958.

Notice is hereby given that the Certificate of Authority issued by the Secretary of the Treasury to the Riverside Insurance Company of America, Little Rock, Arkansas, under the provisions of the Act of Congress approved July 30, 1947 (6 U. S. C. 6–13) to qualify as sole surety on recognizances, stipulations, bonds and undertakings permitted or required by the laws of the United States expired on April 30, 1958, and, upon the request of the Riverside Insurance Company of America, will not be renewed. The company received its initial certificate of authority from the Secretary of the Treasury on August 4, 1955.

Riverside Insurance Company of America has informed the Treasury that it has no bonds in force in favor of the United States. However, in order to provide for the possibility that a bond or bonds issued in favor of the United States may remain in force which do not appear on the records of the company, bond-approving officers are requested, upon the receipt of this notice, to examine carefully the records of their offices and report promptly to the Surety Bonds Branch, Bureau of Accounts, Treasury Department, any outstanding bonds accepted by them and executed by Riverside Insurance Company of America as surety or co-surety on which the liability of the company has not terminated.

It is also requested that the Surety Bonds Branch be advised as expeditiously as possible as to all facts, in detail, relating to any existing claim, or with respect to the occurrence of any event or the existence of any circumstance which may hereafter result in a claim against Riverside Insurance Company of America.

In furnishing the above information bond-approving officers will please give the name of the principal on the bond, the date and penalty of the bond, and with respect to claims, the nature of the claim, the circumstances out of which it arose, and its status at the time of the report.

Bond-approving officers and other agents of the Government charged with the duty of taking bonds, recognizances, stipulations or undertakings should proceed immediately to secure new bonds, where necessary, with acceptable sureties, in lieu of bonds executed by Riverside Insurance Company of America.

[SEAL] JULIAN B. BAIRD, *Acting Secretary of the Treasury.*

[F. R. Doc. 58-3952; Filed, May 26, 1958; 8:49 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Document 179]

[Classification 52]

ARIZONA

SMALL TRACT CLASSIFICATION; PARTIAL REVOCATION

1. Effective May 16, 1958, Federal Register Document 56-6731, appearing on page 6286 of the issue for August 21, 1956, is revoked as to the following described lands:

GILA AND SALT RIVER MERIDIAN

T. 4 N., R. 3E.,
Sec. 21: E½ exclusive of patented mining claim.

EUGENE H. NEWELL, *Acting State Supervisor, Arizona.*

MAY 16, 1958.

[F. R. Doc. 58-3934; Filed, May 26, 1958; 8:45 a. m.]

FEDERAL CIVIL DEFENSE ADMINISTRATION

CALIFORNIA

NOTICE OF MAJOR DISASTER

Pursuant to the authority vested in me by the President under Executive Order 10427, dated January 16, 1953, and Executive Order 10737, dated October 29, 1957 (18 F. R. 407; 22 F. R. 8799), by virtue of the Act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes" (42 U. S. C. 1855–1855g), as amended, and in furtherance of a declaration by the President in his letter to me, dated April 4, 1958, reading in part as follows:

I hereby determine the damage in the various areas of California adversely affected by heavy rainstorms and floods beginning on or about February 24, 1958, to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement State and local efforts.

I do hereby determine the following counties in the State of California to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 4, 1958:

Alameda.	Placer.
Alpine.	Plumas.
Amador.	Riverside.
Butte.	Sacramento.
Calaveras.	San Benito.
Colusa.	San Bernardino.
Contra Costa.	San Diego.
Del Norte.	San Francisco.
El Dorado.	San Joaquin.
Fresno.	San Luis Obispo.
Glenn.	San Mateo.
Humboldt.	Santa Barbara.
Inyo.	Santa Clara.
Kern.	Santa Cruz.
Kings.	Shasta.
Lake.	Sierra.
Lassen.	Siskiyou.
Los Angeles.	Solano.
Madera.	Sonoma.
Marin.	Stanislaus.
Mariposa.	Sutter.
Mendocino.	Tehama.
Merced.	Trinity.
Modoc.	Tulare.
Monterey.	Tuolumne.
Napa.	Ventura.
Nevada.	Yolo.
Orange.	Yuba.

Dated: May 20, 1958.

[SEAL] LEO A. HOEGH, *Administrator, Federal Civil Defense Administration.*

[F. R. Doc. 58-3936; Filed, May 26, 1958; 8:46 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-13760, G-6833]

VIRGIL OIL CO. AND SUN OIL CO.

NOTICE OF APPLICATION AND DATE OF HEARING

MAY 21, 1958.

In the matters of W. C. Schmitz and Lyle Cummins d/b/a Virgil Oil Company, Docket No. G-13760; Sun Oil Company, Docket No. G-6833.

Take notice that on November 20, 1957, W. C. Schmitz and Lyle Cummins, d/b/a Virgil Oil Company (Applicant), filed in Docket No. G-13760 an application pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transco), from certain acreage located in the North Starks Field, Calcasieu and Beauregard Parishes, Louisiana, which acreage was acquired by assignment from Sun Oil Company who held authorization to sell gas therefrom issued by the Commission on February 2, 1956, in Docket No. G-6833 (In the Matters of Douglas Whitaker, et al., Docket Nos. G-6749, et al.),

On March 10, 1958, Applicant amended the original application in Docket No. G-13760 requesting permission and approval to abandon the sale of gas proposed in the subject docket stating that the producing wells in the subject leases have become depleted to the extent that Transco refused to accept deliveries therefrom on and after February 13, 1958, and that the wells have been shut in since that date. Transco has stated that it has no objection to the proposed termination of service.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on June 16, 1958, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 12, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3947; Filed, May 26, 1958; 8:48 a. m.]

[Docket No. G-14876]

ALGONQUIN GAS TRANSMISSION CO.

NOTICE OF APPLICATION AND DATE OF HEARING

MAY 21, 1958.

Take notice that Algonquin Gas Transmission Company (Applicant), a Delaware corporation with its principal place of business in Boston, Massachusetts, filed an application on April 14, 1958, as supplemented on May 9, 1958, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of natural gas facilities as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application, which is on file with the Commission and open to public inspection.

Applicant seeks authority to construct and operate a new 4,000 hp compressor station on its existing 24-inch main line at Cromwell, Connecticut. The application states that Applicant owns and operates a natural gas transmission pipeline system extending from a connection with its sole supplier, Texas Eastern Transmission Corporation (Texas Eastern), near Lambertville, New Jersey, to a point near Boston, Massachusetts. Through these facilities Applicant provides natural gas service to distribution companies for resale to approximately 870,000 customers in the New England area. Applicant states that at the present time there is a margin of only 7,150 Mcf per day between its main line capacity and its customers' peak day requirements for the 1958-59 winter season.

Applicant further states that the proposed facilities will improve its service to existing customers by increasing the margin between its system requirements and system capacity from the 7,150 Mcf per day to a total of 34,563 Mcf per day during the 1958-59 winter season. This, Applicant states, would enable it to insure adequate service to its customers in the event of emergency, in addition to enabling it to deliver some increased quantities of gas in the future and provide operating flexibility. No new sales are proposed.

Applicant estimates the total cost of the proposed compressor station at $1,775,000, which will be financed through a loan from The Chase Manhattan Bank.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on June 26, 1958, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 16, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3948; Filed, May 26, 1958; 8:48 a. m.]

[Docket No. G-12452]

ENTRADA OIL & GAS CO. ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

MAY 22, 1958.

In the matters of Entrada Oil & Gas Company, Docket No. G-12452; Harry N. Royster, Docket No. G-12627; The American Metal Company, Ltd., Operator, et al., Docket No. G-13765; Pacific Northwest Pipeline Corporation, Docket No. G-13863; C. S. V. Oil Exploration Company, Docket No. G-14608.

Take notice that on December 6, 1957, Pacific Northwest Pipeline Corporation (Pacific), a Delaware corporation having its principal place of business in Salt Lake City, Utah, filed an application in Docket No. G-13863, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities, consisting of a 440 H. P. Compressor Station, with appurtenant facilities located at the intersection of its existing 6-inch Bar X lateral supply pipeline, and 26-inch main transmission pipeline in Mesa County, Colorado, to enable it to purchase and receive into its system for transportation and sale in interstate commerce natural gas produced in the Bar X Field, Grand County, Utah, and Mesa County, Colorado, as more fully described in the application on file with the Commission, and open for public inspection. Take further notice that the applications have been filed by independent producers proposing to sell natural gas to Pacific.

Docket No.; Applicant; and Date Filed

G-12452; Entrada Oil & Gas Company; April 23, 1957.

G-12627; Harry N. Royster; May 23, 1957.

G-13765; The American Metal Company, Ltd., Operator, et al.; November 19, 1957.

G-14608; C. S. V. Oil Exploration Company; March 4, 1958.

The foregoing applications have been filed pursuant to section 7 of the Natural Gas Act for certificates of public convenience and necessity authorizing sales of natural gas in interstate commerce to Pacific for resale, subject to the jurisdiction of the Commission, as more fully set forth in the applications on file with the Commission, and open for public inspection.

Entrada Oil & Gas Company (Entrada), Harry N. Royster (Royster), The American Metal Company, Ltd., Operator, et al. (Climax),[1] C. S. V. Oil Exploration Company (C. S. V.), propose to sell to Pacific natural gas produced from the previously undedicated acreages and formations in the Bar X Field, in Grand County, Utah, and Mesa County, Colorado.

Pacific estimates its proposed initial investment in facilities will be $150,995,

[1] American filed on its own behalf, and as Operator, on behalf of The Frontier Refining Company, and Climax Molybdenum Company (non-operating co-owners and signatory seller parties). Climax Molybdenum Company and The American Metal Company, Limited, merged December 30, 1957 and became American Metal Climax, Inc.

and the cost thereof will be defrayed from current funds.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on July 23, 1958, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 14, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3949; Filed, May 26, 1958; 8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3705]

FALL RIVER ELECTRIC LIGHT CO.

NOTICE OF FILING OF DECLARATION REGARDING PROPOSAL TO ISSUE AND SELL BONDS

MAY 20, 1958.

Notice is hereby given that Fall River Electric Light Company ("Fall River"), a public-utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed a declaration, pursuant to the Public Utility Holding Company Act of 1935 ("act") regarding a proposal to issue first mortgage bonds; and has designated sections 6 (a), 7 and 12 (c), and Rules 42 (b) (2) and 50 promulgated under the act as applicable to the proposed transactions.

All interested persons are referred to the declaration on file at the office of the Commission for a statement of the transactions therein proposed, which are summarized as follows:

Fall River proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 promulgated under the act, $3,000,000 principal amount of First Mortgage and Collateral Trust Bonds, __ percent Series, due 1988. The interest rate on the bonds (which will be a multiple of ⅛ of 1 percent) and the price, exclusive of accrued interest, to be paid to the company for the bonds (which shall be not less than 100 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The bonds are to be issued under and secured by the existing Indenture of First Mortgage and Deed of Trust between Fall River and State Street Trust Company, Trustee, as heretofore supplemented, and as to be further supplemented by a Third Supplemental Indenture dated April 1, 1958.

Of the net proceeds to be received from the proposed sale of bonds $940,000 will be applied to the prepayment of outstanding short-term notes; and the application of the remainder of such proceeds, estimated at $2,060,000 to the acquisition of securities of its subsidiary Montaup Electric Company. The latter transaction will be the subject of a further application-declaration.

The fees and expenses to be incurred by Fall River in connection with the proposed transactions are estimated at an aggregate of $32,000, including counsel fees and expenses of $4,900, trustee's fees and expenses (including counsel fees) $3,450, independent appraiser's fees and expenses of $1,750, and accountants' fees of $1,400.

The fees and expenses of independent counsel for the underwriters, which are to be paid by the successful bidder for the bonds, are estimated at $3,300.

The declaration states that the proposed issue and sale of bonds by Fall River is subject to the jurisdiction of Department of Public Utilities of the Commonwealth of Massachusetts, and that a petition has been filed with such department for authorization thereof; and that no other State commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 4, 1958 at 5:30 p. m., request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law which he desires to controvert, or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the Commission may permit the declaration, as filed or as it may be amended, to become effective, as provided in Rule 23 promulgated under the act, or the Commission may grant exemption from its rules as provided by Rules 20 (a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-3938; Filed, May 26, 1958; 8:46 a. m.]

[File No. 70-3703]

EASTERN UTILITIES ASSOCIATES ET AL.

NOTICE OF FILING OF APPLICATION-DECLARATION REGARDING PROPOSAL BY PARENT COMPANY TO ISSUE SHORT-TERM NOTES AND BY SUBSIDIARIES TO ISSUE ADDITIONAL SHARES OF COMMON STOCK

MAY 20, 1958.

In the matter of Eastern Utilities Associates, Brockton Edison Company, Fall River Electric Light Company, File No. 70-3703.

Notice is hereby given that Eastern Utilities Associates ("EUA"), a registered holding company, and its public-utility subsidiaries, Brockton Edison Company ("Brockton") and Fall River Electric Light Company ("Fall River"), have filed a joint application-declaration, pursuant to the Public Utility Holding Company Act of 1935 ("act"), regarding a proposal by EUA to issue short-term notes, and by Brockton and Fall River to issue additional shares of their authorized but unissued common stock. The joint application-declaration designates sections 6 (a), 7, 9 (a), 10, 12 (c) and 12 (f) of the act, and Rules 42 (b) (2), 43 and 50 (a) (1), (a) (2), and (a) (3) promulgated thereunder, as applicable to the proposed transactions.

All interested persons are referred to the joint application-declaration on file at the office of the Commission for a statement of the transactions therein proposed, which are summarized as follows:

EUA proposes to issue promissory notes from time to time during the period ending not later than July 1, 1959, to The First National Bank of Boston, not exceed an aggregate principal amount of $10,600,000 and not to exceed $2,650,000 principal amount at any one time outstanding. The notes are to be unsecured, will mature less than one year from the date of issuance, and bear interest at not in excess of the prime rate in effect at the date of issuance. The notes are to be prepayable in whole or in part without penalty. The proceeds from the proposed notes are to be used to purchase additional shares of common stock of Brockton and Fall River as shown below, prepayment of an outstanding bank loan in the amount of $300,000, and for general corporate purposes.

Brockton proposes to issue and sell to its stockholders, pursuant to a rights offering, 21,664 additional shares of its authorized but unissued $25 par value common stock, at a price of $65 per share, on the basis of one new share for each 12 shares held of record at the time of the offering. EUA, the owner of 253,519 shares of Brockton's outstanding 259,968 shares of common stock, proposes to purchase its pro rata part of such additional shares of Brockton common stock, and all such additional shares thereof as are not purchased by the other holders. Brockton will apply the proceeds from such additional common stock to the prepayment of outstanding short-term bank loans, and to the purchase of additional securities of its subsidiary Montaup Electric Company ("Montaup").

Fall River proposes to issue and sell to its stockholders, pursuant to a rights offering, 18,771 additional shares of its authorized but unissued $25 par value common stock, at $48 per share, on the basis of one new share for each 12 shares held of record at the time of the offering. EUA, the owner of 220,324 shares of Fall River's outstanding 225,250 shares of common stock, proposes to purchase its pro rata part of such additional shares of Fall River's common stock, and all such additional shares thereof as are not purchased by the other holders. Fall River will apply the proceeds of such additional common stock to the prepayment of its outstanding short-term bank loans.

The joint application-declaration states that no State commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions of EUA; that the proposed issuances and sales of common stock by Brockton and Fall River are subject to the jurisdiction of the Department of Public Utilities of the Commonwealth of Massachusetts, and that petitions to such Department of Public Utilities for authorization of such transactions have been filed.

The fees and expenses including counsel fees to be incurred in connection with the proposed transactions are estimated at $635 for EUA; $4,400 for Brockton and $3,800 for Fall River.

Notice is further given that any interested person may, not later than June 4, 1958, request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law which he desires to controvert, or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after such date the Commission may grant the applications and permit the declaration to become effective, as provided by Rule 23 promulgated under the act, or the Commission may grant exemption from its rules as provided by Rules 20 (a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-3939; Filed, May 26, 1958; 8:46 a. m.]

[File No. 24S-1609]

INSPIRATION LEAD CO., INC.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

MAY 21, 1958.

I. Inspiration Lead Company, Inc., an Idaho corporation, filed on May 2, 1958, a notification on Form 1-A and an offering circular relating to an offering of 2,000,000 shares of its common Class B non-assessable shares with debenture warrants at 15 cents per share for an aggregate offering of $300,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to the provisions of section 3 (b) and Regulation A thereunder.

II. The Commission has reasonable cause to believe that the offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to the following:

A. The statement on page 1 of the offering circular to the effect that Inspiration Lead Company, Inc., through its wholly owned subsidiary Dayton-Inspiration Gold Corporation, had acquired from Dayton Consolidated Mines Company a 35 year lease and working agreement on certain valuable gold properties including seven separate mines and a cyanidation flotation mill and that the terms of the lease and working agreement were such as to entitle Dayton-Inspiration Gold Corporation to 70 percent of future profits in that there is a failure to disclose:

1. That the properties are subject to immediate foreclosure because the $150,000 outstanding first mortgage bonds issued by Dayton Consolidated Mines Company in 1948 due June 1, 1953, are now in default both as to principal and interest;

2. Other hazards to the title of the properties.

B. The statement on page 4 of the offering circular to the effect that Dayton Consolidated Mines Company, which was one of Nevada's leading gold producers from 1934-1942 until operations were suspended by the War Production Board, earned operating profits before depreciation, depletion, and taxes of more than a million dollars in that there is a failure to disclose:

1. The marginal net profits;

2. The effects of inflation subsequent to 1942 on the outlook for gold mining;

3. Dayton Consolidated Mines had secured public financing three times since 1942, including a $150,000 bond issue in 1948, with substantially no resulting ore production from its mines;

4. The nature and extent of the expenditures already made by the issuer on the Dayton properties, the purpose thereof and the principal results;

5. The present inoperative condition of the Dayton mill and any authoritative statement by a qualified expert as to the amount of money necessary to recondition the Dayton mill;

6. The ore reserve status of the Dayton properties.

C. The offering circular states that Inspiration Lead Company will be "its own underwriter" and provides for commissions of 25 percent, an aggregate of $75,000, and fails to disclose to whom these commissions will be paid.

D. Failure to adequately disclose that Inspiration Lead Company upon completion of the offering will have outstanding $750,000 of debenture warrants, that $450,000 of debenture warrants have been previously issued by Inspiration Lead Company, that the entire amount of outstanding debenture warrants is payable out of 50 percent of its net income, that said net income is dependent upon the net profits of its subsidiary, Dayton-Inspiration Gold Corporation, that the profits of said subsidiary are derived only after repayments of all sums expended for exploration and development, and consist of 70 percent of the remaining profit after all other expenses.

E. Failure to disclose that Inspiration Lead Company, under its present management, has not operated at a profit or been successful in any of its mining ventures, although in excess of $450,000 has been obtained from the public through the sale of its Class B stock with debenture warrants and by the levy of assessments on its Class A stock.

F. Failure to disclose that there is no market for Inspiration Lead Company's stock, either the Class A assessable or the Class B non-assessable with debenture warrants.

The Commission has reasonable cause to believe that the Regulation A exemption is unavailable by reason of Rule 261 (a) (6) in that a director and officer of Inspiration Lead Company, Inc. is subject to pending injunctive proceedings from further violations of section 10 (b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

It is ordered, Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A of securities of Inspiration Lead Company, Inc. pursuant to said notification be, and it hereby is, temporarily suspended.

Notice is hereby given that any persons having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days herefrom; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing, that if no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-3940; Filed, May 26, 1958; 8:46 a. m.]