

FEDERAL REGISTER

VOLUME 27
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Washington, Friday, June 29, 1962

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Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Defense

Effective upon publication in the FEDERAL REGISTER, subparagraph (43) is added to paragraph (a) of § 6.304 as set out below.

§ 6.304 Department of Defense.

(a) *Office of the Secretary.* * * *

(43) One Staff Assistant to the Special Assistant to the Secretary of Defense.

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
*Executive Assistant to
the Commissioners.*

[F.R. Doc. 62-6336; Filed, June 28, 1962;
8:53 a.m.]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabiliza- tion and Conservation Service (Agricultural Adjustment), Depart- ment of Agriculture

[1962 Marketing Quotas for Upland Cotton
(Bulletin 1)]

PART 722—COTTON

Subpart—Regulations Pertaining to Marketing Quotas for Upland Cot- ton of the 1961 and Succeeding Crops

1962 PENALTY RATE

The purpose of this amendment is to establish the 1962 penalty rate under section 346(a) of the Agricultural Adjustment Act of 1938, as amended, which provides that whenever farm marketing quotas are in effect with respect to any crop of cotton, the producer shall be subject to a penalty on the farm marketing excess at a rate per pound equal to 50 percent of the parity price per pound for cotton as of June 15 of the calendar year in which such crop is produced. The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.).

In order that the exact rate of penalty may be made known to producers who desire to market cotton and to buyers who are charged in the regulations with the duty of collecting penalty on the cotton marketed subject to the penalty and the lien for the penalty, it is essential

that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

Section 722.51 of the Regulations Pertaining to Marketing Quotas for Upland Cotton of the 1961 and Succeeding Crops (26 F.R. 3672, 5489, 7755, 8069, 9899; 27 F.R. 4418, 5027) is amended by addition of a new paragraph (b) at the end thereof to read as follows:

(b) *Penalty rate for 1962 crop.* The parity price for cotton effective as of June 15, 1962, is 39.38 cents per pound. The rate of penalty for cotton produced in 1962 as calculated on the basis of such parity price and in accordance with the provisions of § 722.26 shall be 19.7 cents per pound of lint cotton.

(Sec. 346, 375; 63 Stat. 674, 52 Stat. 66, as amended; 7 U.S.C. 1346, 1375)

Effective date: Date of filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on June 26, 1962.

H. D. GODFREY,
*Administrator, Agricultural Sta-
bilization and Conservation
Service.*

[F.R. Doc. 62-6343; Filed, June 28, 1962;
8:55 a.m.]

[1962 Marketing Quotas for Extra Long
Staple Cotton (Bulletin 2)]

PART 722—COTTON

Subpart—Regulations Pertaining to Marketing Quotas for Extra Long Staple Cotton of the 1961 and Succeeding Crops

1962 PENALTY RATE

The purpose of this amendment is to establish the rate of penalty per pound of ELS cotton for the 1962 crop. Section 347(c) of the Agricultural Adjustment Act of 1938, as amended, provides that the applicable penalty rate for ELS cotton under section 346 of the act shall be the higher of 50 percent of the parity price or 50 percent of the support price for ELS cotton as of June 15 of the calendar year in which the ELS cotton crop is produced. The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.).

In order that the exact rate of penalty may be made known to producers who desire to market ELS cotton and to buyers who are charged in the regulations with the duty of collecting penalty on such cotton marketed subject to the pen-

alty and the lien for the penalty, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

Section 722.152 of the Regulations Pertaining to Marketing Quotas for Extra Long Staple Cotton of the 1961 and Succeeding Crops (26 F.R. 5489, 7758, 10093) is amended by addition of a new paragraph (b) at the end thereof to read as follows:

(b) *Penalty rate for 1962 crop.* The parity price for ELS cotton effective as of June 15, 1962, is 79.6 cents per pound. Section 101(f) of the Agricultural Act of 1949, as amended, provides that the support price for 1962 crop ELS cotton shall not exceed the same per centum of the parity price as for the 1956 crop. Such percentum was 75 percent. No increased price support levels for 1962 crop ELS cotton have been established pursuant to section 402 of the Agricultural Act of 1949, as amended. Accordingly, if the support price for 1962 crop ELS cotton were determined on the basis of the June 15, 1962, parity price, the support price thus determined could not exceed 75 per centum of the parity price for ELS cotton as of June 15, 1962. Thus, the parity price, being higher than the possible support price, is used in accordance with the provisions of § 722.126 hereof in calculating the rate of penalty for 1962 crop ELS cotton. Such rate of penalty shall be 39.8 cents per pound of ELS lint cotton.

(Sec. 346, 347, 375; 63 Stat. 674, 675, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1346, 1347, 1375)

Effective date: Date of filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on June 26, 1962.

H. D. GODFREY,
*Administrator, Agricultural Sta-
bilization and Conservation
Service.*

[F.R. Doc. 62-6342; Filed, June 28, 1962;
8:55 a.m.]

Chapter X—Agricultural Stabilization and Conservation Service (Market- ing Agreements and Orders), Dep- artment of Agriculture

[Milk Order 2]

PART 1002—MILK IN NEW YORK- NEW JERSEY MARKETING AREA

Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of

1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the New York-New Jersey marketing area (7 CFR Part 1002), it is hereby found and determined that:

(a) The following provisions of the order no longer tend to effectuate the declared policy of the Act:

(1) The following bulk tank provisions (§ 1002.24):

(i) In the second sentence of the opening paragraph, the words beginning with "pool or nonpool" where they first appear, and continuing through the end of the sentence.

(ii) All of paragraphs (a), (c), (d), (e), and (f) and all of paragraph (g) except for the words "Any bulk tank unit shall be designated a pool bulk tank unit in any month".

(2) The following provisions with respect to pool plant qualifications:

(i) The last proviso in § 1002.27(a).

(ii) In § 1002.29, the opening words "Except for plants which, pursuant to paragraph (a) of § 1002.27 or pursuant to the proviso of paragraph (c) or to paragraph (e) of this section, are not eligible for designation", and in the proviso the words "or (2) in any of the months of December through June if it was a pool plant pursuant to provisions of Part 1015 of this chapter in each of the preceding months of July through November."

(iii) The provisos in § 1002.29 (a), (b), and (c).

(iv) In § 1002.29(d), prior to the proviso the words "other than to another plant", and the first proviso.

(v) Paragraph (e) of § 1002.29.

(3) In § 1002.83, subparagraphs (2), (3), and (4) of paragraph (b).

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) The Supreme Court concluded in *Lehigh Valley Cooperative Farmers, Inc., et al. v. United States et al.* that the rates of payment specified in § 1002.83(b) (2) and (3) are inconsistent with the Agricultural Marketing Agreement Act of 1937. This conclusion eliminates the partial regulation of nonpool milk sold as Class I-A under the terms of the current order.

(2) Under the terms of the present order, most of the milk could be made nonpool on July 1, 1962, and remain nonpool until July 1, 1963, regardless of its use or classification. This could result in complete elimination of minimum uniform pricing of fluid milk sold in the New York-New Jersey marketing area.

(3) The suspension order set forth above will result in substantially all fluid milk sold in the New York-New Jersey marketing area being subject to full pricing under the marketing order. This is necessary to prevent chaos in the market pending changes through the amendment procedure.

(4) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(5) This suspension order is necessary to reflect current marketing conditions

and to maintain orderly marketing conditions in the marketing area.

Therefore, good cause exists for making this order effective July 1, 1962.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: July 1, 1962.

Signed at Washington, D.C., on June 26, 1962.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 62-6338; Filed, June 28, 1962;
8:54 a.m.]

[Milk Order 96]

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Order Amending Order; Correction

The following correction is made in F.R. Doc. 62-5290, filed May 29, 1962, and published on May 30, 1962 (27 F.R. 5040): The reference in § 1096.70(f) (1) to "paragraph (d)" should read "paragraph (e)".

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C., on June 25, 1962.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 62-6340; Filed, June 28, 1962;
8:54 a.m.]

[Milk Order No. 120]

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS, MARKETING AREA

Order; Correction

The following correction is made in F.R. Doc. 62-5197, filed May 29, 1962, and published on May 30, 1962 (27 F.R. 5050): The reference in § 1120.45 to "§ 1120.12(c)" should read "§ 1120.17(c)".

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C., on June 25, 1962.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 62-6341; Filed, June 28, 1962;
8:54 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 62-WA-66]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Alteration

The purpose of this amendment to § 600.1505 of the regulations of the Administrator is to delete reference to the Dahlgren Complex, Va., Restricted

Areas (R-6611, R-6612, R-6613) in the description of intermediate altitude VOR Federal airway No. 1505.

The description of Victor 1505 excludes portions of that airway which coincide with the Dahlgren Complex, Va., Restricted Areas during the times of designation of those restricted areas. R-6611, R-6612, and R-6613 as presently designated do not coincide with Victor 1505, so this reference may be deleted.

Since this amendment is editorial in nature and does not involve the designation of additional airspace, notice and public procedure hereon are unnecessary and it may be made effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following action is taken: In the text of § 600.1505 (27 F.R. 3194, 4472, 4151) "The portions of this airway which coincide with the Dahlgren Complex, Va., Restricted Areas (R-6611, R-6612, R-6613) are excluded during the times of designation of these restricted areas." is deleted.

This amendment shall become effective upon the date of its publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on June 22, 1962.

LEE E. WARREN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 62-6305; Filed, June 28, 1962;
8:46 a.m.]

Chapter V—National Aeronautics and Space Administration

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 5—Delegations and Designations

Sec.
1204.500 Scope of subpart.
1204.501 Delegation of authority to acquire real estate for the United States by condemnation under judicial process.

AUTHORITY: §§ 1204.500 and 1204.501 issued under 42 U.S.C. 2473(b) (1).

§ 1204.500 Scope of subpart.

This subpart establishes various delegations of authority to, and designations of, NASA officials to carry out prescribed functions of the National Aeronautics and Space Administration.

§ 1204.501 Delegation of authority to acquire real estate for the United States by condemnation under judicial process.

(a) The Director of Administration of the National Aeronautics and Space Administration may exercise all the authority of the National Aeronautics and Space Administration, under the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257), and under the further authority of the Act of Congress approved July 29, 1958 (Public Law 85-568, 72 Stat. 426, 42 U.S.C. 2473-b-(3))

to acquire real estate for the United States by condemnation under judicial process, whenever in the opinion of the Director of Administration it is necessary for the Government to do so, and the Director of Administration is authorized to submit to the Attorney General of the United States requests for condemnation.

(b) The Director of Administration of the National Aeronautics and Space Administration may exercise the power of the Administrator of the National Aeronautics and Space Administration under the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258(a)) and Acts supplementary thereto and amendatory thereof, to sign declarations of taking.

(c) The delegation of authority covered in paragraphs (a) and (b) of this section shall be effective on and after July 1, 1962.

JAMES E. WEBB,
Administrator.

[F.R. Doc. 62-6320; Filed, June 28, 1962;
8:51 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 8292]

PART 13—PROHIBITED TRADE PRACTICES

Alscap, Inc., et al.

Subpart—Misbranding or mislabeling:
§ 13.1185 Composition: § 13.1185-90 Wool
Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68) [Cease and desist order, Alscap, Inc., et al., New York, N.Y., Docket 8292, Feb. 14, 1962]

In the Matter of Alscap, Inc., a Corporation, Luba Scapa and Joseph Scapa, Individually and as Officers of Said Corporation, and Lopa of Italy, Ltd., a Corporation, and Bernard Kaplan and Joseph Scapa, Individually and as Officers of Said Corporation

Order requiring New York City importers of Italian wool products to cease misrepresenting the fiber content of wool products, including fabrics and skirts, imported from Italy.

The order to cease and desist is as follows:

It is ordered, That respondents Alscap, Inc., its officers, and Luba Scapa and Joseph Scapa, individually and as officers of said corporation, and Lopa of Italy, Ltd., its officers, and Bernard Kaplan and Joseph Scapa, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or indirectly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the

Wool Products Labeling Act of 1939, of woolen fabrics and ladies' skirts, or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to affix labels on such products showing each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

By "Order Vacating Prior Order, Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: February 14, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-6309; Filed, June 28, 1962;
8:47 a.m.]

[Docket No. C-75]

PART 13—PROHIBITED TRADE PRACTICES

Lake Charm Fruit Co.

Subpart—Discriminating in price under section 2, Clayton Act—Payment or acceptance of commission, brokerage or other compensation under 2(c): § 13.820 Direct buyers.

(Secs. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1527; 15 U.S.C. 13) [Cease and desist order, Lake Charm Fruit Company, Oviedo, Fla., Docket C-75, Feb. 12, 1962]

Consent order requiring Oviedo, Fla., citrus fruit packers to cease violating section 2(c) of the Clayton Act by granting commissions or brokerage on a large number of sales made by brokers and other direct buyers purchasing for their own accounts for resale.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondent Lake Charm Fruit Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit, or fruit products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from: Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection

with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: February 12, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-6310; Filed, June 28, 1962;
8:48 a.m.]

[Docket No. C-76]

PART 13—PROHIBITED TRADE PRACTICES

Lake Region Packing Association

Subpart—Discriminating in price under section 2, Clayton Act—Payment or acceptance of commission, brokerage or other compensation under 2(c): § 13.820 Direct buyers.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1527; 15 U.S.C. 13) [Cease and desist order, Lake Region Packing Association, Tavares, Fla., Docket C-76, Feb. 12, 1962]

Consent order requiring Tavares, Fla., packers of citrus fruit to cease violating section 2(c) of the Clayton Act by granting commissions or discounts on a large number of sales made to brokers and other direct buyers purchasing for their own accounts for resale.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondent Lake Region Packing Association, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit, or fruit products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from: Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: February 12, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-6311; Filed, June 28, 1962;
8:48 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary

PART 4—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Subpart B—Acceptance of State Certificates

DESIGNATION OF STATES; EXTENSION OF EXPIRATION DATE

The age, employment, or working certificates or permits of several States are designated in 29 CFR 4.21 as having the same force and effect as Federal certificates of age issued under section 3(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1061 as amended; 29 U.S.C. 203).

In a document promulgated on June 14, 1961, and published in the *FEDERAL REGISTER* on June 21, 1961 (26 F.R. 5503) it was provided that these designations would expire on June 30, 1962.

Accordingly, pursuant to subsection 3(1) and subsection 11(b) of the Fair Labor Standards Act of 1938 (52 Stat. 1061 and 1066 as amended; 29 U.S.C. 203 and 211), and Reorganization Plan No. 2 of 1946 (3 CFR 1943-1948 Comp., p. 1064), I hereby extend the designations contained in 29 CFR 4.21 until June 30, 1963.

Signed at Washington, D.C., this 22d day of June 1962.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 62-6319; Filed, June 28, 1962;
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Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to the authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202, and have the concurrence of the military departments.

PART 1—GENERAL PROVISIONS

1. Sections 1.109-2, 1.308(b)(1) and 1.701-1(a)(2) are revised to read as follows:

§ 1.109-2 Deviations affecting one contract or transaction.

Deviations from this subchapter or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures providing (a) special circumstances justify a deviation and (b) written notice of such deviation is furnished to the Assistant

Secretary of Defense (Installations and Logistics) and in the case of the Department of the Army, to the Assistant Secretary of the Army (I&L), Attn: ASPR Policy Member; the Department of the Navy, the Chief of Naval Material, Attn: (Code MO 3B); Department of the Air Force, Director of Procurement Management, DCS/S&L, Attn: AFSPM-AS; and the Defense Supply Agency, Executive Director, Procurement and Production, Attn: DSAH-PM. Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

§ 1.308 Records of contract actions.

(b) Each contract file shall include the following data, if applicable:

(1) a copy of the procurement directives or request, or appropriate reference thereto;

§ 1.701-1 Small business concern.

(2) *Special industry definitions.* Unless certified as a small business concern, by SBA, in addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet special criteria in the following industries:

(i) *Construction industry.* In the construction industry, the average annual receipts of the concern and its affiliates for the preceding three fiscal years must not exceed \$5,000,000: except that if the concern is located in Alaska, such receipts must not exceed \$6,250,000. ("Annual receipts" means the annual receipts less returns and allowances of a concern and its affiliates.)

(ii) *Food, canning, and preserving industry.* In the food, canning and preserving industry, the concern and its affiliates must employ not more than 500 employees exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

(iii) *Trucking, warehousing, packing and crating industry.* In the trucking, warehousing, packing and crating industry, the annual receipts of the concern and its affiliates must be \$3,000,000 or less; except that if the concern is located in Alaska, such receipts must be \$3,750,000 or less. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its relationship with an interstate van line, if the concern's annual receipts have not exceeded \$3,000,000 during its most recently completed fiscal year (\$3,750,000 if located in Alaska), and not more than fifty percent (50%) of such annual receipts are directly attributable to the concern's relationship with an interstate van line.

(iv) *Certain industries employing not more than 1,000 employees.* In the following industries the number of employees of the concern and its affiliates must not exceed 1,000 employees:

(a) *Aircraft equipment and parts industry.* This special definition for the aircraft equipment and parts industry

applies only in the procurement of the following items:

Airframes and structural components.
Aircraft propellers and hubs.
Wheel and brake systems.
Jet engines.
Fuel tanks.
Aircraft hydraulic systems.
Aircraft vacuum systems.
Aircraft air-conditioning.
Heating and pressurizing equipment.
Fire control systems.
Flight instruments.
Flight simulators (except small cockpit trainers).
Aircraft deicing systems.

(b) *Petroleum refining industry.* This special definition for the petroleum refining industry, excepting procurement of lubricants and miscellaneous petroleum products, applies to a concern and its affiliates which have a capacity of not more than 30,000 barrels per day crude oil capacity from owned or leased facilities. ("Crude oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.)

(c) *Air transportation industry.*

(d) *Rubber footwear industry.*

(e) *Tire and inner tube industry.*

(f) *Small arms industry.* This special definition for the small arms industry applies to the procurement of small firearms having a bore of 30-mm (or 1.18 inches) and below.

(g) *Small arms ammunition.* This special definition applies to the procurement of ammunition for small arms having a bore of 30-mm (or 1.18 inches) and below.

§ 1.702 [Amendment]

2. In § 1.702(b), the reference to "§ 3.107" is changed to read "§ 4.205."

3. Sections 1.706-6(e), 1.804-2(d) and 1.100 are revised, as follows:

§ 1.706-6 Partial set-asides.

(e)(1) After the award price for the nonset-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the nonset-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the nonset-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing notices; provided that, where equal low bids are received on the nonset-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the nonset-aside portion (under the equal low bid procedures of § 2.407-6 of this chapter) shall have

first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion.

(2) When the award price for the nonset-aside portion has been determined and where an award will be made to a small business concern and the same small business concern is entitled to receive the set-aside portion of a solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

§ 1.804-2 Set-aside procedures.

(d) (1) After the award price for the nonset-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the nonset-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the nonset-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notices; provided that, where equal low bids are received on the nonset-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the nonset-aside portion (under the equal low bid procedures of § 2.407-6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the nonset-aside portion. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see § 3.201-2(b) (1) of this chapter as to negotiation).

(2) When the award price for a nonset-aside portion has been determined and where an award will be made to a labor surplus area concern and the same labor surplus area concern is entitled to receive a set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

§ 1.1002 Availability of invitations for bids and requests for proposals.

A reasonable number of copies of invitations for bids and requests for proposals publicized in the Commerce Business Daily, including specifications and other pertinent information, shall be maintained by the issuing office. To the extent that unclassified invitations for bids and requests for proposals are available, they shall be provided at the

purchasing office to manufacturers, construction contractors, and regular dealers and to others having a legitimate interest therein, such as publishers, trade associations, procurement information services and others who disseminate information concerning invitations for bids and request for proposals; otherwise the purchasing office may limit the availability of invitations for bids and requests for proposals to perusal at such office.

4. In § 1.1003-1, revise the introductory portion and paragraph (a), and revise §§ 1.1003-2 and 1.1003-3, as follows:

§ 1.1003-1 General.

Every proposed advertised or negotiated procurement made in the United States, which may result in an award in excess of \$10,000 shall be publicized promptly in the Commerce Business Daily "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards," except that the following need not be publicized in the Synopsis:

(a) Procurement of a classified nature where the information necessary to be included or referenced in the solicitation (Invitation for Bid or Request for Proposal) is in itself of a classified nature and the public disclosure of this information would violate security requirements. All other classified procurements shall be published in the Synopsis, if sufficient information of an unclassified nature, can be provided in the solicitation to enable a prospective contractor to submit a bid or proposal.

§ 1.1003-2 Research and development.

In order that potential sources may learn of research and development programs, advance notices of the Government's interest in a specific research and development field shall be published in the Commerce Business Daily in accordance with § 1.1003-9(d) so as to give such sources adequate opportunity to submit information for evaluation of their research and development capabilities, except where security considerations prohibit such publication. Each specific procurement of research and development projects shall be publicized in the Commerce Business Daily unless one of the exceptions in § 1.1003-1 is applicable or unless an advance notice of the Government's requirements in the particular field, published in the Commerce Business Daily in accordance with § 1.1003-9(d), has been sufficiently specific to permit potential sources to request solicitations for the prospective procurement. (See § 4.203 of this chapter.)

§ 1.1003-3 Synopses of subcontract opportunities.

(a) *By contracting officers.* In order to broaden the opportunity in negotiated procurement for subcontracting by small business concerns and others, contracting officers shall, unless not in the Government's interest or subcontracting opportunities do not exist, publish in the Commerce Business Daily the names and addresses of firms to whom requests for proposals are to be issued. This procedure will offer opportunity to small business concerns and others

interested in subcontracting to make direct contact with prospective prime contractors at an early stage in the procurement. An addition to the regular synopsis prepared in accordance with § 1.1003-9 shall be made as set forth in § 1.1003-9(f).

(b) *By prime contractors and subcontractors.* Prime contractors and subcontractors should be encouraged to use the Commerce Business Daily to publicize opportunities in the field of subcontracting stemming from their defense business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, Room 1300, 433 West Van Buren Street, Chicago 7, Ill., under the heading "Subcontracting Assistance Wanted" and in the form of the following example:

XYZ CO., ATTN JOHN Z. SMITH, TELE. NO. RANDOLPH 6-1111, 102 FIRST AVE., CHICAGO 7, ILL., seeks Subcontractor on items to be used in connection with Contract No. ----- awarded 5-1-60.

COILS, INDUCTION, DWG. NO.

10-742----- 10,000 ea.

(Name, description and quantity of other items or services may be included as long as contract assistance is desired under the same contract number.) If interested, make inquiry before 5-16-60 to above Contractor.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

5. Sections 2.104-4, 2.201(a) (25), (26), and (27), 2.302, and 2.303-2 are revised as follows:

§ 2.104-4 Indefinite delivery type contracts.

(a) *Definite quantity contracts.* See § 3.409(a) of this chapter.

(b) *Requirements contracts.* See § 3.409(b) of this chapter.

(c) *Indefinite quantity contracts.* See § 3.409(c) of this chapter.

§ 2.201 Preparation of invitation for bids.

(a) * * *

(25) Pending revision of paragraph 4 of the Terms and Conditions of the Invitation for Bids on the back of Standard Form 30 (October 1957 edition) and Standard Form 33 (October 1957 edition) and of paragraph 7 of Standard Form 22 (January 1961 edition), the following provision shall be submitted, as to each form, in lieu of the cited paragraph:

Late bids and modifications or withdrawals. Bids and modifications or withdrawals thereof received at the office designated in the Invitation for Bids after the exact time set for opening of bids will not be considered unless: (a) They are received before award is made; (b) they are sent by registered mail, or by certified mail for which an official post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized; and (c) it is determined by the Government that late receipt was due solely to either (i) delay in the mails, or delay by the telegraph company if telegraphic bids are authorized, for which the bidder was not responsible or (ii) mishandling by the Government after receipt at the Government

installation. However, a modification which is received from an otherwise successful bidder and which makes the terms of the bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted. Bidders using certified mail are cautioned to obtain a legibly postmarked Receipt for Certified Mail and retain it against the chance that the postmark thereon will be required as evidence that a late bid was timely mailed. If the postmark on such receipt, or on the registered mail wrapper shows the hours of mailing as well as the date, the time of mailing shall be established accordingly; if it shows the date but not the hour, the time of mailing shall be deemed to be the last minute of the date shown, unless the bidder furnishes evidence from the post office of mailing which, in the case of registered mail, establishes an earlier time; or in the case of certified mail, where the receipt for Certified Mail identifies the post office station of mailing, the time of mailing shall be deemed to be the last minute of the business day of that station. (APR. 1962)

(26) A provision covering the required source for jeweled bearings (see § 1.315 of this chapter).

(27) A statement substantially as follows (prominently placed in the invitation):

Caution to bidders—Late bids. See the special provision entitled "Late Bids and Modifications or Withdrawals" which provides that late bids and modifications or withdrawals thereof sent through the mails will be considered only if sent by registered mail, or by certified mail for which a postmarked receipt has been obtained as specified in such provision. (APR. 1962)

§ 2.302 Time of bid submission.

Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time set for opening of bids. Where telegraphic bids are authorized a telegraphic bid received by telephone from the receiving telegraph office before the time set for opening of bids shall be considered if such bid is confirmed by the telegraph company with a written telegram.

§ 2.303-2 Consideration for award.

A late bid shall be considered for award only if:

(a) It is received before award;
(b) In the case of a mailed bid (other than one covered by paragraph (c) (2) of this section), it was sent by registered mail, or by certified mail for which an official post office stamp (postmark) on the original Receipt for Certified Mail has been obtained; and

(c) It is determined that either:

(1) The lateness was due solely to a delay in the mails (based on evidence pursuant to § 2.303-3), or to a delay by the telegraph company where the invitation authorizes telegraphic bids, for which the bidder was not responsible; or

(2) The bid, if submitted by mail (or by telegram where authorized), was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time set for opening and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated.

6. Sections 2.303-3, 2.303-4, 2.303-6, 2.304, and 2.305 are revised to read as follows:

§ 2.303-3 Mailed bids.

(a) *Registered mail.* The time of mailing of a late bid mailed by registered mail shall be determined by the date, and hour if shown, in the postmark. If the postmark shows the date but not the hour of mailing, the time of mailing shall be deemed to be the last minute of the date shown unless the bidder furnishes evidence from the post office of mailing which establishes an earlier time. If the postmark does not show the date of mailing, the bid shall be deemed to have been mailed too late unless the bidder furnishes evidence from the post office of mailing which establishes a timely date.

(b) *Certified mail.* The time of mailing of a late bid mailed by certified mail for which a postmarked Receipt for Certified Mail was obtained shall be determined by the official post office stamp (postmark) on the original Receipt for Certified Mail, to be furnished by the bidder, showing the date of receipt by the post office at the time of mailing. If this postmark shows the hour of mailing as well as the date, the time of mailing shall be established accordingly; if it shows the date but not the hour, the time of mailing shall be deemed to be the last minute of the date shown, except that, where the Receipt for Certified Mail identifies the post office station of mailing, the time of mailing shall be deemed to be the last minute of the business day of that station. If this postmark does not show the date of mailing, the bid shall be deemed to have been mailed too late.

(c) *Delivery time.* Information concerning the normal time for mail delivery shall be obtained by the purchasing activity from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office servicing that activity. When time permits, such information shall be obtained in writing.

§ 2.303-4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, except where the bidder demonstrates by clear and convincing evidence, which includes substantiation by an authorized official of the telegraph company, that the bid, as received at the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late (see § 2.302).

§ 2.303-6 Notification to late bidders.

Where a late bid is received and it is clear from available information that under § 2.303-2 such late bid cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late and will not be considered. However, where a late bid is transmitted by registered mail and received before award but it is not clear from available information whether the bid can be considered, or in any case of a late bid transmitted by certified mail received before award, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids No. _____, dated _____, was received after the time for opening specified in the Invitation. Accordingly, your bid will not be considered for award unless (1) there is received from you by _____ (Date)

clear and convincing evidence from the post office of mailing which establishes the date (and hour, if possible) that the bid was deposited with that post office, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence of the time of closing of that station is also acceptable. (APR. 1962)

The foregoing notification shall be appropriately modified in the case of late telegraphic bids.

§ 2.304 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written telegraphic notice received prior to the exact time set for opening of bids. A telegraphic modification or withdrawal of a bid received by telephone from the receiving telegraph office prior to the time fixed for opening of bids shall be considered if such message is confirmed by the telegraph company with a written telegram. Modifications received by telegram shall be sealed in an envelope and no information contained therein shall be disclosed prior to the time set for bid opening.

(b) A bid may be withdrawn in person by a bidder or his authorized representative, providing his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for opening of bids.

§ 2.305 Late modifications and withdrawals.

(a) Modifications of bids and requests for withdrawal of bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal shall be subject to the rules applicable to late bids set forth in § 2.303. However, a modification received from an otherwise successful bidder which is favorable to the Government shall be considered at any time that such modification is received.

(b) Where a late modification or late withdrawal is received and it is clear from available information that under paragraph (a) of this section such late modification or late withdrawal cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his modification or withdrawal was received late and will not be considered. However, where a late modification or late withdrawal is transmitted by registered mail and received before award but it is not clear from available information whether the modification or withdrawal can be considered, or in any case of a late modification or withdrawal transmitted by certified mail and received before award,

the bidder shall be promptly notified substantially as follows:

Your (modification) (request for withdrawal) of your bid in response to Invitation for Bids No. _____, dated _____, was received after the time for opening specified in the Invitation. Accordingly, your (modification) (request for withdrawal) will not be considered effective unless (1) there is received from you by _____ clear

(Date)

and convincing evidence from the post office of mailing which establishes the date (and hour, if possible) that the (modification) (request for withdrawal) was deposited with that post office, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence of the time of closing of that station is also acceptable. (Apr. 1962.)

The foregoing notification shall be appropriately modified in the case of late telegraphic modifications or withdrawals.

(c) Late modification or late withdrawals, which are not considered as being effective, shall be held unopened until after award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder, except that:

(1) An unidentified modification or request for withdrawal may be opened solely for purposes of identification, as provided in § 2.401; and

(2) Any modification received from an otherwise successful bidder shall be opened, so as to determine whether it should be considered as stated in the proviso in paragraph (a) of this section.

(d) Records of late modifications and late withdrawals shall be maintained in accordance with the record requirements for late bids set forth in § 2.303-8.

PART 3—PROCUREMENT BY NEGOTIATION

7. Sections 3.107, 3.107-1, 3.107-2, 3.107-3, 3.107-4, 3.107-5, 3.107-6, 3.107-7, and 3.107-8 are revoked as follows:

§ 3.107 Selection of research and development contractors. [Revoked]

§ 3.107-1 General. [Revoked]

§ 3.107-2 Small Business concerns. [Revoked]

§ 3.107-3 Selection of sources for solicitations. [Revoked]

§ 3.107-4 Solicitation. [Revoked]

§ 3.107-5 Conduct of negotiations. [Revoked]

§ 3.107-6 Evaluation for award. [Revoked]

§ 3.107-7 Cost and price estimates. [Revoked]

§ 3.107-8 Documentation. [Revoked]

8. New paragraph (f) is added to § 3.202-2; § 3.202-3 is revised; and § 3.402 (a) (2) is revised, as follows:

§ 3.202-2 Application.

(f) Purchase request citing an issue priority designator 1 through 6, inclusive, when the priority designator has been assigned in accordance with the Uniform Materiel Issue Priority System.

NOTE: Requirements citing an issue priority designator 7 through 20 may justify negotiation under this or other negotiation authority, but in such cases the specific circumstances must be set forth in the determination and findings.

§ 3.202-3 Limitation.

Every contract negotiated under the authority of §§ 3.202 through 3.202-3 shall be accompanied by a determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Subpart C of this part, except that in the case of a contract resulting from a purchase request citing an issue priority designator 1 through 6, the determination and findings need only cite the designator as justification. The authority of §§ 3.202 through 3.202-3 shall not be used when negotiation is authorized by the provisions of § 3.203 or 3.206.

§ 3.402 Basic principles for use of contract types.

(a) General. * * *

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or loses in relation to achieving or failing to achieve realistic targets. Where award is based on effective price competition, there is reasonable assurance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic should be carefully considered in determining which type of contract should be selected and how it should be used—especially where the contractor is to assume substantial cost responsibility, since it is to his advantage to maximize the difference between estimated costs and actual costs in price negotiation as well as in contract performance. If estimated costs are negotiated on the basis of a full consideration of all significant cost or pricing data that are reasonably available at the time of negotiation, a contract type providing a high profit potential and concomitant contractor risks may be entirely appropriate even though there is a possibility that actual costs will vary widely from the estimate.

9. Revise the introductory portion of paragraph (c) in § 3.404-6; and revise §§ 3.404-7(c), 3.707, and 3.802-2, as follows:

§ 3.404-6 Retroactive and prospective price redetermination at a stated time during performance.

* * * * *

(c) *Limitations.* This contract type may be used only until January 1, 1962, and until then, only when:

§ 3.404-7 Retroactive price redetermination after completion.

* * * * *

(c) *Limitations.* This type of contract shall not be used unless the procurement is for research and development at an estimated cost of \$100,000 or less, and

(1) The contractor's accounting system is adequate for price redetermination purposes;

(2) Reasonable assurance exists that price redetermination action will be taken promptly at the time specified;

(3) A ceiling price is established; and

(4) Until January 1, 1963, written approval has been received from the Office of the Deputy Chief of Staff for Logistics or Offices of the Heads of the Technical Services, for the Army; Office of Naval Material, for the Navy; Headquarters, Air Force Systems Command or Headquarters, Air Force Logistics Command, for the Air Force; and the Executive Director, Procurement and Production, for the Defense Supply Agency or, after January 1, 1963, written approval has been received from a level above the Head of a Procuring Activity.

Until January 1, 1963, this type of contract may also be used for procurements of an urgent nature where the total period of contract performance is six months or less and the limitations in subparagraphs (1) through (4) of this paragraph are satisfied.

§ 3.707 Cost-sharing rates.

Cost-sharing arrangements are frequently made wherein the cost participation by the contractor is evidenced by an agreement to accept overhead rates which are lower than the anticipated actual overhead rates. In such cases, a negotiated fixed-ceiling overhead rate may be used for application prospectively, provided that, in the event overhead rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the negotiated rates, the negotiated rates will be reduced. Where reductions are necessary, they will be accomplished in accordance with § 3.705. The Government will not be obligated to pay any additional amounts on account of overhead above the negotiated fixed-ceiling rates. (For cost sharing practices under Research and Development Contracts, see § 4.208 of this chapter.)

§ 3.802-2 Selection of prospective sources.

Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be solicited from a sufficient number of competent potential sources to insure adequate competition. (See §§ 1.302, 1.902, 3.101, 3.104, 3.105, 4.205-1, and 12.102 of this chapter.) The bidders mailing lists

prescribed by § 2.205 of this chapter should be used where appropriate.

§ 3.804-2 [Amendment]

10. In § 3.804-2(b), reference to "§ 3.107-7" is changed to "§ 4.205-5."

11. Sections 3.808-2(h) (3) (i) and 3.808-4 are revised, and §§ 3.812, 3.812-1, 3.812-2, 3.812-3, and 3.812-4 are revoked, as follows:

§ 3.808-2 Factors for determining fee or profit.

* * * * *

(h) *Subcontracting.* * * *

(3) * * *

(i) The company's policies and procedures which energetically support Government small business and labor surplus area programs;

§ 3.808-4 Mineral fees or cost sharing arrangements.

In certain circumstances, as where experimental, developmental, or research work is attractive because of direct or potential commercial applications, consideration should be given to using a contract providing for only a nominal or token fee, or no fee, or on a cost-sharing basis. (See also § 4.208 of this chapter.)

§ 3.812 Special use allowances for research facilities acquired by educational institutions. [Revoked]

§ 3.812-1 Definitions. [Revoked]

§ 3.812-2 Policy. [Revoked]

§ 3.812-3 Authorization of special use allowances. [Revoked]

§ 3.812-4 Negotiation and administration of contracts providing for special use allowances. [Revoked]

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENTS

12. A new Subpart B is added to Part 4, as follows:

Subpart B—Procurement of Research and Development

- Sec. 4.200 Scope of subpart.
- 4.201 Definitions.
- 4.202 General policy.
- 4.203 Publicizing procurement actions and expanding sources.
- 4.204 Method of contracting.
- 4.205 Selection of research and development contractors.
- 4.205-1 Selection of sources.
- 4.205-2 Solicitation.
- 4.205-3 Conduct of negotiations.
- 4.205-4 Evaluation of award.
- 4.205-5 Evaluation of price and costs.
- 4.205-6 Profit or fee.
- 4.205-7 Documentation.
- 4.206 Grants for basic research.
- 4.207 Types of contracts most applicable for research and development.
- 4.208 Cost sharing practices.
- 4.209 Special use allowances for research facilities acquired by educational institutions.
- 4.210 Placing subcontracts for research and development effort.
- 4.211 Scientific and technical reports.
- 4.212 Data under research and development contracts.
- 4.213 Insurance under research and development contracts.

- Sec. 4.213-1 Contractor immunity from liability for torts.
- 4.213-2 Indemnification against unusually hazardous risks.
- 4.214 Government property under research and development contracts.
- 4.214-1 General.
- 4.214-2 Control of government property in possession of research and development contractors.
- 4.214-3 Nonseverable facilities.
- 4.214-4 Transfer of title to equipment to nonprofit educational or research institutions.

AUTHORITY: §§ 4.200 to 4.214-4 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 4.200 Scope of subpart.

Procurement procedures of special application to research and development contracts are set forth in this subpart, and in certain instances other portions of this subchapter having particular significance to research and development contracts are cross-referenced herein. This subpart however, does not purport to contain or cross-reference all provisions of this subchapter applying to research and development contracts. Other provisions of this subchapter are also applicable to research and development contracts and shall be adhered to where applicable.

§ 4.201 Definitions.

(a) "Basic Research" means that type of research which is directed toward increase of knowledge in science. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof.

(b) "Applied Research" means that type of effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art". Applied research does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as hereinafter provided.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) "Educational or other nonprofit organization" means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

(e) "Unsolicited proposal" is a research or development proposal which is made to the Government by a prospective contractor without prior formal or

informal solicitation from a purchasing activity.

§ 4.202 General policy.

A fundamental mission of research and development programs is to maintain scientific and technological superiority requisite to promote and advance the effectiveness of military operations. The accomplishment of this mission requires the broadest possible base of contractor and subcontractor sources including the optimum use of manpower and resources. It is essential that the best technical competence be located and fully utilized. The procurement pattern of research and development must be responsive to the achievement of these goals on a timely basis.

§ 4.203 Publicizing procurement actions and expanding sources.

The Departments shall continually search for and develop information on sources (including small business concerns) competent to perform research and development. Advance publicity, including use of the Commerce Business Daily (see § 1.1003-2 of this chapter) to the fullest extent practicable, shall be given for this purpose. The search should include (a) a review of relevant data or brochures furnished by sources seeking research and development work and (b) a cooperative effort by technical personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking other sources by publication of proposed procurements, in addition to the synopsis requirement.

§ 4.204 Method of contracting.

In research and development procurements it is generally not possible to formulate precise specifications necessary for formal advertising and, therefore, negotiation is necessary. The inherent difficulties in obtaining research and development by formal advertising are recognized by the exception in § 3.211 of this chapter. However, two-step formal advertising as stated in Subpart E, Part 2 of this chapter, may be useful, for example, in the case of an advanced developmental project. While the use of negotiation is the general rule for research and development contracts, this does not diminish the obligation to obtain competition to the maximum practicable extent. (See Subparts A and B, Part 3 of this chapter.)

§ 4.205 Selection of research and development contractors.

§ 4.205-1 Selection of sources.

(a) *General.* Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapons systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources. Second, it means unremitting efforts to increase the number of sources, and to encourage participation by small busi-

ness concerns, as well as others, in Defense research and development.

(b) *Small business sources.* (1) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the purchasing activity is interested.

(2) In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's needs concerning research and development programs under consideration for specific future procurement actions. The SBA may provide pertinent information concerning potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research or development covered by the programs. Full evaluation shall be given to any such information in selecting qualified sources.

(c) *Recommendations by technical personnel.* Recommendations as to which potential sources are technically qualified shall be made by cognizant technical personnel after review of the information obtained as a result of advance publicity (see § 4.203) and as appropriate, on the basis of discussion with potential sources (either singly or in a group), correspondence, or suitable surveys.

(d) *Research and development pools.* See § 1.302-3 of this chapter.

(e) *Unsolicited proposals.* Unsolicited proposals may be the product of original thinking and generally are the property of the organization or individual who presents them. They are offered in the hope that the Government will contract with the offeror for further research on, or development of, the ideas they contain. Extreme care must be exercised by the Government not to disclose to third parties any proprietary information contained in unsolicited proposals. Unsolicited proposals received by procuring activities shall be handled in a manner which will encourage prospective contractors to disclose to the Government ideas which they have originated, conceived, or developed.

§ 4.205-2 Solicitation.

(a) In order to minimize the preparation of technical proposals, which can be both costly and wasteful of scientific or engineering manpower, contracting officers should request proposals only from sources which have been technically evaluated and found qualified to perform research or development in the

specific field of science or technology involved. Where there is no substantial question as to the choice of the source, as where only one source is found fully qualified as a result of thorough technical evaluation or the purpose of the contract is to explore an idea or initial development submitted in confidence by one firm, solicitations may be limited to a single source. Where several sources are found fully qualified technically, proposals generally shall be solicited from each such source. Sources which become known as a result of publication of synopses of specific procurements shall be sent requests for proposals only if such sources have been technically evaluated or if such evaluation can be made consistent with required procurement actions. In all procurements of research or development in which no small business firm was solicited for a proposal, a statement shall be included in the procurement file setting forth the reasons for not soliciting small businesses.

(b) In addition to paragraph (a) of this section, exploratory requests may be used to determine the existence of ideas or prior work in specific fields of research. However, the request for such information shall clearly state that it does not impose any obligation on the Government or signify a firm intention of the Government to enter into a contract.

§ 4.205-3 Conduct of negotiations.

See § 3.804 of this chapter. The contracting officer should make certain that each prospective contractor fully understands the details of the various phases of the Government's requirement, especially the statement of work. This may be best accomplished by conferences between a prospective contractor, the contracting officer, and appropriate technical personnel, particularly where there is doubt that a work statement is understood or will be interpreted correctly by prospective contractors.

§ 4.205-4 Evaluation for award.

(a) Generally, research and development contracts should be awarded to those organizations, including educational organizations, which have the highest competence in the specific field of science or technology involved. However, awards should not be made for research or development capabilities that exceed those needed for the successful performance of the work.

(b) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider the following:

(1) The contractor's understanding of the scope of the work as shown by the scientific or technical approach proposed;

(2) Availability and competence of experienced engineering, scientific, or other technical personnel;

(3) Availability, from any source, of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved; and

(5) The contractor's willingness to devote his resources to the proposed work with appropriate diligence.

(c) In determining to whom the contract shall be awarded, the contracting officer shall consider not only technical competence, but also all other pertinent factors including management capabilities, cost controls, and past performance in adhering to contract requirements, weighing each factor in accordance with the requirements of the particular procurement. See § 1.903 of this chapter.

§ 4.205-5 Evaluation of price and costs.

(a) While cost or price should not be the controlling factor in selecting a contractor for a research or development contract, cost or price should not be disregarded in the choice of the contractor. It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable, but also to determine his understanding of the project and ability to organize and perform the contract. The most useful tools for this purpose are price analysis (§ 3.807-3 of this chapter) and cost analysis (§ 3.807-4 of this chapter).

(b) Price analysis generally considers the overall reasonableness of the proposals in relation to the total contemplated expenditures and the extent and nature of the tasks scheduled to be accomplished. In most research and development contracts, the inability to define specifications and the nature of the end items prevent the effective use of certain techniques of price analysis, such as comparisons with prior quotations and current prices and evaluations in terms of quantitative yardsticks. The conclusions reached by price analysis techniques must be supported by cost analysis procedures, used to examine the details of the offeror's proposals.

(c) The analysis of cost factors begins with an evaluation of the reliability of the offeror's cost estimating procedures and the dependability of his cost controls, as demonstrated by his history of cost management in the performance of other contracts or by his establishment of sound practices for this purpose. The cost analysis proceeds with a critical examination of the composition of each cost element in terms of its expected application to the objectives of the contract, and its conformance to the accepted principles of allocability and reasonableness. (See Subpart C, Part 15, and § 15.201 of this subchapter.) A Government cost estimate may help in projecting tools for these purposes and may develop the expected incidence of various cost factors in relation to performance phases, planned segments, or identifiable "milestones". This estimate should provide a summary forecast of the time, effort, materials, equipment, and services necessary to accomplish the research or development objective. The comparison and reconciliation of the Government cost estimate with the offeror's cost estimate for the same phases, segments, or events should

bring into focus any areas of excessive or insufficient emphasis and provide a foundation for meaningful discussions with the offeror.

(d) Special care should be exercised to comply with §§ 15.205-1 and 15.205-33 of this chapter in the allowances of advertising costs under § 15.307-3 of this chapter.

§ 4.205-6 Profit or fee.

See §§ 3.405-1(c), 3.405-5(c), 3.805-2, 3.806, 3.807-5(d), and 3.808 of this chapter.

§ 4.205-7 Documentation.

Contract files for research and development procurement shall be fully documented to include the basis and reasons for the selection of the sources solicited and for the award. Such documentation should be adequate to justify the selection of the contractor over others whose proposals, from the standpoint of some single factors (such as lower estimated costs or shorter performance time), might appear more advantageous to the Government. (See § 1.308 of this chapter.)

§ 4.206 Grants for basic research.

Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense directives as implemented in Departmental procedures.

§ 4.207 Types of contracts most applicable for research and development.

See Subpart D, Part 3 of this chapter.

§ 4.208 Cost sharing practices.

It is not uncommon that certain advantages accrue to contractors performing research or development. Increased technical knowledge useful in commercial operations, adding to technical knowhow and training of employees, opportunity to benefit through patent rights, and use of background knowledge in future production contracts, are examples of advantages which contractors may receive from performing Government research or development. Because of these advantages, cost sharing arrangements should be negotiated, when appropriate, in research and development procurements. Cost sharing arrangements may be accomplished in a number of ways; for example, by the use of a reduced overhead rate, by eliminating charges for certain direct costs (e.g., salaries of technical personnel), by eliminating particular material or equipment charges, or by eliminating other forms of charges or by acceptance of various types of contributions by the contractor in the performance of the contract.

§ 4.209 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this section:

(1) "Special use allowance" means a negotiated direct or indirect allowance for buildings, structures, and real prop-

erty, other than land, computed at an annual rate in excess of the rate which normally would be allowed under Subpart C, Part 15 of this chapter.

(2) "Research facility" means real property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense.

(b) *Policy.* The expanding requirements of the Department of Defense for the performance of scientific research programs by the educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities required for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in Subpart C, Part 15 of this chapter. However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential governmental research programs to go forward. The resort to special use allowances as provided by this section is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances contained in § 15.304(e) of this chapter. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

(c) *Authorization of special use allowances.* The Secretary concerned, or his sole designee for the purpose, may approve special use allowances for the acquisition or construction costs of research facilities financed by educational institutions only when all of the following conditions are met:

(1) The research facility is essential to the performance of Department of Defense contracts;

(2) The program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government;

(3) The proposed agreement for the special use allowances represents a sound business arrangement;

(4) It is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research; and

(5) The proposed use of the research facility is in consonance with the underlying objective of the Government in granting the special use allowance.

(d) *Negotiation and administration of contracts providing for special use al-*

lowances. The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in subparagraph (1) through (13) of this paragraph.

(1) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(2) Where the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. Where the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with Subpart C, Part 15 of this chapter may be applied thereafter to the balance.

(3) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than that which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in this section.

(4) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(5) Where more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(6) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(7) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(8) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(9) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the

contract. However, equitable adjustments may be made in the special use allowance during the construction period if the research facility is partially used for research under the contract.

(10) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(11) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(12) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(13) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in paragraph (c) of this section, and to the Director of Defense Research and Engineering, Office of the Secretary of Defense.

§ 4.210 Placing subcontracts for research and development effort.

Since the selection of research or development contractors is based upon seeking the best scientific and technological sources, it is important that the contractor selected on this basis does not in turn subcontract technical or scientific work without prior approval of the contracting officer. The clause prescribed in § 7.402-8 of this chapter for cost-reimbursement type research and development contracts, requires prior written consent of the contracting officer for the placement of any subcontract which has experimental, developmental, or research work as one of its purposes. During the negotiation of the contract, it is imperative that the contracting officer obtain complete information concerning the contractor's plans for subcontracting any portion of the research or development effort. See §§ 1.906, 3.807-5, and 3.903-2 of this chapter.

§ 4.211 Scientific and technical reports.

(a) Research and development contracts are required to contain appropriate data clauses as prescribed in Subpart B, Part 9 of this chapter, which usually provide, among other things, for the reproduction and use for any purpose of the Government of any or all of the information to be provided under the contract. Contracting officers shall require contractors to furnish all such information resulting from research or development contracts. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government.

(b) It is important that the results of research and development contracts be made readily available to Government activities, and to non-Government organizations and persons who have a need to know in accordance with procedures of the Military Departments. The Armed Services Technical Information Agency, Arlington Hall Station, Arlington

12, Virginia, provides a central service for the interchange of scientific and technical information of value to Department of Defense agencies and contractors.

§ 4.212 Data under research and development contracts.

(a) It is imperative that all research and development contracts carefully specify the data to be delivered under the contract since the Basic Data clause requires delivery only of "Subject Data" and defines "Subject Data" as data to be delivered under the contract.

(b) In planning a developmental procurement, when subsequent production contracts are contemplated, consideration should be given to the need and time required for obtaining a procurement package. The term "procurement package" means plans, drawings, specifications and other descriptive information and data necessary to achieve competition in production contracts.

§ 4.213 Insurance under research and development contracts.

See Part 10 of this chapter.

§ 4.213-1 Contractor immunity from liability for torts.

In the case of cost-reimbursement type contracts where nonprofit educational institutions or other contractors do not carry insurance either because as charitable organizations they claim immunity from liability for torts or, in the case of state institutions, because the state law does not permit them to expend their funds for insurance premiums, the requirements of the Insurance-Liability clause, § 7.203-22 of this chapter, may be modified to recognize a claim of partial immunity as provided in § 7.402-26(a) or for a claim of total immunity as provided in § 7.402-26(b).

§ 4.213-2 Indemnification against unusually hazardous risks.

Under the authority provided by 10 U.S.C. 2354, research and development contracts may specifically include language to indemnify contractors against liability on account of claims by third parties (including those of contractor's employees) for death, bodily injury, and loss or damage to property, and for loss of or damage to the contractor's property, to the extent such liabilities arise out of the direct performance of the contract involved and from a risk defined in the contract as unusually hazardous.

§ 4.214 Government property under research and development contracts.

§ 4.214-1 General.

In research and development contracts with commercial organizations, the clauses relating to property furnished by the Government or acquired by the contractor at Government expense are the same as those used in other types of contracts. (See §§ 13.502 and 13.503 of this chapter.) Different clauses are prescribed for use in research and development contracts with educational or other nonprofit institutions where no profit or fee is involved. (See §§ 13.505 and 13.506 of this chapter.)

§ 4.214-2 Control of government property in possession of research and development contractors.

The basic requirements to be observed by the Departments for establishing and maintaining control over Government Property as set forth in § 30.2 of this chapter are applicable to research and development contracts except, in contracts with educational or other nonprofit organizations (executed on a nonprofit basis), § 30.3 of this chapter is applicable.

§ 4.214-3 Nonseverable facilities.

Under 10 U.S.C. 2353, construction or acquisition of nonseverable research, developmental, or test facilities is authorized under certain conditions.

§ 4.214-4 Transfer of title to equipment to nonprofit educational or research institutions.

(a) *General.* This section implements 42 U.S.C. 1892 which gives the Department of Defense discretionary authority to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research.

(b) *Purpose of the legislation.* The general purpose of the legislation implemented by this section is to facilitate the scientific research performed under contract for the Government by the nonprofit institutions and organizations described in paragraph (a) of this section. It is intended to permit the elimination of the record-keeping required when the Government retains title to equipment furnished or purchased under a research contract, in those cases where the cost of such record-keeping to the contractor or to the Government is out of proportion to the value of the equipment. It is further intended to reduce where desirable the time and labor involved in formally circulating through the Government long lists of highly specialized or minor items of equipment or in relocating major equipment when such relocation is impracticable or uneconomical and not required for other research programs of the Government. Finally, it is intended to provide a measure of administrative flexibility when, from the standpoint of increased research effectiveness and in the absence of other Departmental or Governmental requirements, it is desirable to transfer title to equipment to such research contractors.

(c) *Transfer of title.* (1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research may provide, or may be amended to provide, that the contracting officer may transfer title to equipment to the contractor. Such transfer of title may be effected at the beginning, during the course of, or at the end of a contract: *Provided,*

(i) The equipment was purchased with grant or contract funds allocated for basic or applied scientific research;

(ii) (a) Either the retention of title in the Government would create an administrative burden not warranted by the value of the equipment, or the keeping of inventory and records by the contractor would become prohibitively complicated or expensive; or

(b) It would be impractical or uneconomical to remove the equipment from the contractor's plant;

(iii) The transfer of title will further the scientific research objectives of the Department concerned; and

(iv) The transfer of title is not precluded by controls governing the equipment involved.

(2) The contracting officer may, when provision is made therefor by contract, vest in the contractor title to any item of equipment having an acquisition cost of \$3,000 or less, following his written determination that the criteria in subparagraph (1) of this paragraph have been met. When the acquisition cost of an item of equipment is in excess of \$3,000, the contracting officer may transfer title to the contractor upon written approval of the head of the procuring activity or his designee. Such approval shall be given on the basis of the criteria in subparagraph (1) of this paragraph and only after considering whether transfer of title is consistent with any known need of the Department concerned. (No formal screening is required.) In addition, for items of equipment having an acquisition cost in excess of \$25,000, the approval of designated representatives* of the Departments must be secured. Such approval shall be given within sixty (60) days, but only after a reasonable check, commensurate with the value of the item involved, has established that there is no known requirement for the item within the respective Departments.

Where title to equipment is vested pursuant to subparagraph (1) of this paragraph, the contractor shall be without further obligation to the Government with respect to such equipment, except that the contractor must agree, as a condition to taking title, that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract.

(d) *Contract clauses.* Where it is anticipated that in connection with a contract, title to equipment may be

vested in the contractor in accordance with this section, the alternate paragraph (c) of the clause in § 13.505 of this chapter shall be included in fixed-price type contracts, and the addition to paragraph (c) of the clause in § 13.506 of this chapter shall be included in cost-reimbursement contracts.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

13. Subpart A of Part 5 is revised, as follows:

Subpart A—Procurement Under Federal Supply Schedule Contracts

Sec.	
5.100	Applicability.
5.101	Federal Supply Schedule Contracts.
5.102	Mandatory Federal Supply Schedules.
5.102-1	General.
5.102-2	Exceptions to mandatory use.
5.102-3	Applicability of listed Federal Supply Schedules.
5.102-4	Establishment or revision of Federal Supply Schedules mandatory upon the Department of Defense.
5.103	Federal Supply Schedules not mandatory upon the Department of Defense.
5.104	Other Federal Supply Schedules.
5.104-1	Completely optional Federal Supply Schedules.
5.104-2	Regional Federal Supply Schedules.
5.105	Order for supplies or services.
5.106	Federal Supply Schedules with Multiple Source Provisions.

AUTHORITY: §§ 5.100 to 5.106 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 5.100 Applicability.

This part applies only to procurement of supplies to be delivered, or services to be performed in the United States, its possessions or Puerto Rico. It does not apply to items under the cognizance of the Defense Subsistence Supply Center or the Defense Medical Supply Center or to items which are being purchased for resale.

§ 5.101 Federal Supply Schedule Contracts.

The Federal Supply Service, General Services Administration, establishes contracts for common use classes of supplies and services. These contracts are summarized in Federal Supply Schedules which list the supplies or services that may be purchased from the contractors named therein. Military purchasing activities shall order their requirements for supplies or services covered by these contracts as set forth in §§ 5.102 and 5.103. Copies of the Federal Supply Schedules and the Federal Supply Schedule Check List (a quarterly publication indicating the status of all Federal Supply Schedules) are distributed by the General Services Administration to all purchasing activities. Copies of the Schedules and the Check List and the General Provisions of the Federal Supply Schedule contracts are available from the General Services Administration regional offices listed in § 5.203. Requests should be submitted on GSA 457.

§ 5.102 Mandatory Federal Supply Schedules.

§ 5.102-1 General.

Federal Supply Schedules under which procurement is mandatory on the Department of Defense are listed in § 5.102-3. The pertinent contracts provide that for a definite period the contractor is obligated to deliver all supplies or services that may be ordered thereunder by Government agencies, subject to the stated minimum and maximum order limitations.

§ 5.102-2 Exceptions to mandatory use.

(a) *Delivery requirements.* When the delivery period offered in the Federal Supply Schedule does not meet the delivery requirements of the purchasing activity, use of the Federal Supply Schedule is not mandatory. However, delivery dates shown in Federal Supply Schedules are based upon the average capability of the contractor and are usually conservative. Contractors, in most instances, are able to make delivery within a shorter period of time than the maximum provided in the Schedule. Therefore, when the delivery requirements of the purchasing activity are less than the maximum shown in the Schedule, the contractor should be queried as to whether the delivery requirements can be met. This procedure shall be followed except in those cases where transportation time from the contractor's shipping point, or time required for inquiry and reply, make conformance impracticable. In cases where multiple award schedules are involved, the purchasing activity need only query one contractor after considering the requirements of § 5.106.

(b) *Similar items.* When specific supplies or services listed in a Federal Supply Schedule will not meet a special requirement, use of the Schedule is not mandatory. When supplies or services having the same general characteristics and intended use are procured from other sources, a statement signed by an authorized official of the purchasing activity will be prepared, identifying the supplies or services purchased, and explaining why similar items listed in the applicable Federal Supply Schedule would not meet the specific requirements. The statement will be furnished to the General Services Administration office which issued the Schedule within 15 days after the date of purchase.

(c) *Abnormal requirements.* When the requirements of the purchasing activity are (1) less than the minimum order limitation or (2) in excess of the maximum order limitation provided in the applicable Federal Supply Schedule, use of the Schedule is not mandatory. However, where requirements for supplies or services exceed the maximum limitations of the applicable Schedule, but are within the DOD-GSA Interagency Purchase Assignments, those items will be procured through the General Services Administration. (See § 5.1201-4 of this chapter.)

*In the case of the Department of the Army, the designee is Army Research Office, Office Chief of Research and Development, Washington 25, D.C.

In case of the Department of the Navy, the designee is Chief of Naval Research, Office of Naval Research, Washington 25, D.C.

In the case of the Department of the Air Force, the designee is Commander, Office of Aerospace Research, Washington 25, D.C.

In the case of the Defense Supply Agency, the designee is Executive Director for Supply Operations, Defense Supply Agency, Washington 25, D.C.

§ 5.102-3 Applicability of listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which

identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. The Schedules should be checked for complete detail concerning the exceptions.

(a) *Mandatory nationally.*

FSC		Title of schedule	Remarks
Group	Class		
*25		VEHICULAR EQUIPMENT COMPONENTS	
	2520	Brake lining and clutch facings (metallic)	Mandatory on field service of the DOD for tire chains, clutch facings, metallic brake linings, and automotive seat belts only.
	2530	Brake band lining (nonmetallic) and brake shoes, bonded or riveted lined	
	2540	Tire chains, truck floor mats, and seat belts.	
	2900	Engine preheater	*This schedule also includes certain items in the following classes:
	4330	Oil filter elements	
26		TIRES AND TUBES, PART I	Not mandatory on requirements in excess of \$100,000 per line item.
	2620	Tires and tubes, pneumatic, aircraft	
26		TIRES AND TUBES, PART II	Mandatory for commercial tires and tubes, only.
	2610	Tires and tubes, pneumatic, except aircraft	
26	2630	Tires, solid and cushion	Not mandatory on spark plugs for diesel, semi-diesel, aircraft, and marine motors.
	2640	Valves and valve cores	
29		ENGINE ACCESSORIES	No exceptions.
	2920	Spark plugs, resistor and nonresistor types	
*36		SPECIAL INDUSTRY MACHINERY, PART I	Not mandatory for the following machines, their accessories and repair parts: Cameras, copying, lithographic, items 51-1 through 51-3; photocopying and processing machines, items 51-4 through 51-36, 51-58, 51-59, and 51-60-1; printing machines, blueprint, items 51-37 through 51-42; printing and dry developing machines, items 51-43 through 51-51; and printing and moist developing machines, items 51-52 through 51-54. Rental, repair, and maintenance in section B not mandatory.
	3610	Offset blankets, plates, lithographic printing, aluminum (presensitized) and paper (unsensitized, parchment, and plastic coated) and duplicating machine rolls (gelatin type).	
36	6850	*This schedule also includes certain items in the following classes: Lithograph solution for plates, aluminum (presensitized) and paper (unsensitized), and lithographic plate preserving gum.	Not mandatory on instantaneous recordings: recording of one tape only; blank tape or multiple duplication.
	3610	SPECIAL INDUSTRY MACHINERY, PART II Printing, duplicating, and bookbinding equipment.	
62	5835	COMMUNICATION EQUIPMENT, PART I Sound recording and transcription services (recording pressings and transcription service).	Not mandatory on Army or Air Force for items covered by Army or military specifications.
	6220	LIGHTING FIXTURES AND LAMPS, PART I Household and quarters lamps	
*62		LIGHTING FIXTURES AND LAMPS, PART II	No exceptions.
	6240	Electric lamps	
6750		*This schedule also includes certain items in the following class: Photoflash lamps.	

FSC		Title of schedule	Remarks
Group	Class		
67	6750	PHOTOGRAPHIC EQUIPMENT, PART II Photographic sensitized and chemical supplies.	Mandatory except for papers, special white-print (diaz) papers, films, and cloths, item 19-4; photographic cloth, items 6750-558-4332 through 6750-558-4333; 6750-551-0233 through 6750-551-0235; and 6750-558-4331; photographic film, item 19-3; photographic paper, items 19-5 and 6750-543-7721 through 6750-208-7218; and plates.
	*67	PHOTOGRAPHIC EQUIPMENT, PART IV Photographic supplies (purchase, maintenance, repair, and rental) of micro-photographic equipment and supplies.	
71	7530	*This schedule also includes certain items in the following classes: Microfilm print paper	No exceptions.
	7105	FURNITURE, PART I Household furniture, correlated groups of living room, dining room, and bedroom furniture in ranch type (oak and knotty pine), Early American (maple and cherry), modern, American style (Danish walnut finish), and bedsprings.	
71		FURNITURE, PART II Household furniture (upholstered living room furniture).	Do.
	7105	FURNITURE, PART III Household furniture (traditional and modern, bedroom, dining room, living room furniture).	
71		FURNITURE, PART IV Household furniture (rattan living room, dining room, and recreation room furniture).	Do.
	7105	OFFICE FURNITURE (WOOD AND METAL) PART V Ash receptacles, folding chairs, mirrors, wardrobes.	
*71	7105	Office furniture	No exceptions.
	7195	Racks, wearing apparel stand, lecture	
71	5340	*This schedule includes certain items in the following classes: Parts for filing cabinet and chairs.	Do.
	7520	Filing shelves	
71		FURNITURE, PART V, SUPPLEMENT 1 Classroom furniture	Do.
	7110	FURNITURE, PART V, SUPPLEMENT 2 Metal office furniture, filing cabinets, security (insulated and non-insulated).	
71	7110	FURNITURE, PART V, SUPPLEMENT 4 Metal office furniture—steel shelf filing cabinets.	Do.
	7105	Ash receivers	
71		FURNITURE, PART VIII Office furniture (unitized wood) and companion chairs.	Do.
	7110	HOUSEHOLD AND COMMERCIAL FURNISHING AND APPLIANCES, PART I Floor coverings.	
*72	7220	*This schedule also includes certain items in the following class: Tape, pressure sensitive adhesive	Not mandatory on DOD for deck covering and items required aboard vessels.
	8135		

FSC		Title of schedule	Remarks
Group	Class		
74	7430	OFFICE MACHINES, PART I Typewriters and office type composing machines.	Not mandatory for portable typewriters, composing machine and units repair parts, and typewriter repair parts; repair and maintenance of electric typewriters and composing machines.
74	7450	OFFICE MACHINES, PART II AND III Accounting and calculating machines.	Not mandatory on instrumentation tape and reels.
74	7490	Office type sound recording and reproducing machines. Miscellaneous office machines.	
74	7410	OFFICE MACHINES, PART VI Punched card system machines.	Rental, repair, and maintenance in part II not mandatory.
74	7440	Automatic data processing systems.	Not mandatory for rental of equipment and machines, sections A and B; automatic data processing systems, items 132-16 through 132-21; and repair and maintenance, section D.
75	7510	OFFICE SUPPLIES, PART I, SECTION A Office supplies. *This schedule also includes certain items in the following class: Tape, label marking.	No exceptions.
75	7530	OFFICE SUPPLIES, PART I, SECTION B Office devices and accessories. *This schedule also includes certain items in the following classes: Tubes, marking. Packaging and packing bulk materials and tape. Paper and paperboard.	Do.
75	7510	OFFICE SUPPLIES, PART I, SECTION C Holders, binder, label, flange type. Stationery and papers, drawing and tracing. *This schedule also includes certain items in the following classes: Labels, printed. Holders, card, label, stick-on type.	Not mandatory on waterproof paper.
75	7530	OFFICE SUPPLIES, PART V Envelopes, printed and plain.	No exceptions.
76	7610	BOOKS, DICTIONARIES, AND OTHER PUBLICATIONS, PART I, SECTIONS A AND B Books and pamphlets.	Section A only.
76	7640	LAW BOOKS AND PERIODICALS, PART II, SECTIONS A AND B Law books. Newspapers and periodicals. Law books, microfilm edition.	Not mandatory on periodicals.
79	7910	CLEANING EQUIPMENT AND SUPPLIES Vacuum cleaners, parts and attachments.	No exceptions.
79	7910	CLEANING EQUIPMENT AND SUPPLIES, SUPPLEMENT 1 Floor polishers, accessories and replacement parts, and steel wool pads.	Do.
91	9130	FUELS, LUBRICANTS, OILS, AND WAXES, PART III (Service Station Deliveries) Gasoline and jet fuel.	Do.
91	9140	Fuel oils.	
91	9150	Oils and greases, cutting, lubricating, hydraulics.	

(b) Mandatory in Washington, D.C., and contiguous area.

FSC		Title of schedule	Remarks
Group	Class		
*90	9005	REFLECTORIZED SHEETING, PART I ReflectORIZED sheeting. *This schedule also includes certain items in the following class: Cordit spray reflective liquid.	Do.
	8010	Applicators, adhesive activator.	
	8020	Fabric adhesive.	
	8040		
42	4210	FIRE FIGHTING EQUIPMENT, PART I Fire fighting equipment.	Not mandatory on fire hose, packing materials, and certain fire extinguishers.
*53	5335	HARDWARE AND ABRASIVES, PART I Metal screening.	No exceptions.
	5340	Miscellaneous hardware.	
	5350	Abrasive materials.	
	8135	*This schedule also includes certain items in the following class: Packaging and packing bulk materials.	
61		ELECTRIC WIRE AND POWER AND DISTRIBUTION, PART III Dry batteries.	Do.
66	6640	LABORATORY EQUIPMENT, PART II Glass, plastic, and porcelain laboratory ware.	Mandatory except for supplies procured through Defense Medical Supply Center.
*68	6810	CHEMICALS AND CHEMICAL PRODUCTS, PART III Chemicals.	No exceptions.
	6830	Gases: Compressed and Liquefied. *This schedule also includes certain items in the following class: Oxygen, USP.	
*71	7105	FURNITURE, PART VI Household furniture.	No exceptions.
	7110	Office furniture.	
	7195	Miscellaneous furniture and fixtures. *This schedule also includes certain items in the following class: Office devices and accessories.	
*72	7230	HOUSEHOLD AND COMMERCIAL FURNISHINGS AND APPLIANCES, PART II Shades (window).	Do.
	8305	*This schedule also includes certain items in the following class: Textile fabrics (window shade cloth).	
75	7520	OFFICES SUPPLIES, PART IV Office devices and accessories (rubber stamps).	Do.
87	8710	AGRICULTURAL SUPPLIES, PART I Forage and feed.	Mandatory only on Marine Barracks, Quantico, Va, for items of bran, oats, hay, and straw.

FSC		Title of schedule	Remarks
Group	Class		
87	-----	AGRICULTURAL SUPPLIES, PART II	Mandatory only on Naval Air Test Center, Patuxent, Md.
	8730	Seed-----	
89	-----	SUBSISTENCE, PART II	No exceptions.
	8920	Bread and rolls-----	
	8940	Sirup-----	
	8950	Yeast-----	
89	-----	SUBSISTENCE, PART III	Do.
	8960	Ice-----	
103	-----	CORRECT TIME SERVICE	Mandatory on Washington, D.C., activities only.
103	-----	REGRAINING OF OFFSET DUPLICATING PLATES, PART II	No exceptions.
103	-----	WIPING CLOTH SERVICE, PART IV	Do.

(c) *Mandatory in GSA Regional Areas other than Region 3.*

FSC		Title of schedule	Remarks
Group	Class		
68	-----	CHEMICALS AND CHEMICAL PRODUCTS, PART III	Mandatory on DOD activities in Region 10.
	6830	Gases: Compressed and liquefied (propane gas)-----	
68	-----	CHEMICALS, PART IV	Do.
	6810	Gases, industrial and medicinal-----	

§ 5.102-4 **Establishment or revision of Federal Supply Schedules mandatory upon the Department of Defense.**

(a) *Policy.* The Administrator of General Services Administration has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than \$1,000 per year except where:

(1) The item is a part or accessory incidental to a basic item;

(2) The item is a component of a unit assembly;

(3) The item has a demonstrated need to fill out a range of colors, sizes or other characteristics; or

(4) The item involves a contract for services.

(b) *Procedures.* Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded to the Executive Director, Procurement and Production, Defense Supply Agency for coordination with the Military Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action

on such proposals is desired in a shorter period of time, a minimum of thirty-five days for consideration should be anticipated. These proposals will be distributed to the representatives of the Military Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Military Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Installations and Logistics) for resolution.

§ 5.103 **Federal Supply Schedules not mandatory upon the Department of Defense.**

In addition to the Federal Supply Schedules listed in § 5.102, there are other Schedules mandatory for use by one or more civilian agencies of the Government but not mandatory on the Department of Defense. Any item which has been decentralized for local purchase and listed in a non-mandatory Schedule shall be ordered therefrom if (a) the Schedule or the contractor's price list identifies the item by Federal stock number, (b) delivery requirements can be met and (c) the order is within the minimum and maximum limitations of the Schedule. Exception from the foregoing is permitted only where the contracting office has actual knowledge that the purchase can be made more advantageously to the Government from a source other than the Supply Schedule, after allowing for the burdens and cost of a new procurement under applicable prescribed procedures. The contracting office shall not solicit bids, proposals, quotations, or otherwise test the market for comparison with the Schedule price. Where a

procurement from a source of supply other than the non-mandatory Schedule indicates that such source might be more advantageous to the Government as a general source, the name and address of the supplier together with other details of the procurement action shall be forwarded to the General Services Administration through the Regional Office of the GSA region in which the procuring activity is located. The provisions of § 5.102-2 are applicable when determining whether a contractor can meet delivery requirements.

§ 5.104 **Other Federal Supply Schedules.**§ 5.104-1 **Completely optional Federal Supply Schedules.**

In addition to the Federal Supply Schedule contracts described in §§ 5.102 and 5.103, there are Federal Supply Schedules which are completely optional for use by any Government purchasing activity and on which vendors are not required to accept orders. Such Schedules currently exist in the following areas:

FSC group

- 25-28-29-38---- Motor-Vehicle Parts and Accessories, Engine and Generator Parts, and Road Building Machinery Parts.
- 74----- Office Machines (other than typewriters), Rental, Repair and Maintenance.

When an order is contemplated from such schedules the contracting officer shall assure himself prior to ordering that use of the Schedule is reasonably justifiable as being more advantageous to the Government than a purchase from other sources, price, delivery, service and administrative expense considered.

§ 5.104-2 **Regional Federal Supply Schedules.**

There are certain Federal Supply Schedules issued by the GSA that are for use in a specific geographical region. These Schedules apply to activities within the specified region to the extent prescribed therein.

§ 5.105 **Order for supplies or services.**

DD Form 1155 should be used as a delivery order in purchasing supplies or services from Federal Supply Schedule contractors.

§ 5.106 **Federal Supply Schedules with Multiple Source Provisions.**

Certain of the Federal Supply Schedules, listed in § 5.102-3, provide several sources for certain requirements. When orders in excess of \$2,500 are placed at other than the lowest price available for type of services or supplies required, the purchasing activity shall include in the contract file a memorandum for record setting forth the facts and conclusions justifying the order. The justification may be based on considerations such as time of delivery, service, and administrative expense. Where the Federal Supply Schedule indicates that the multiple awards were made in order to make available a selection of services and supplies to meet a specific requirement, the justification may, in addition to the considerations stated above, be

based on differences in performance characteristics, and compatibility with existing equipment or systems.

14. Subparts B, C, and E of Part 5 are revised to read as follows:

Subpart B—Procurement From General Services Administration Stores Depot

- Sec.
5.200 Applicability.
5.201 General.
5.202 GSA Stores Stock Catalog.
5.203 General Services Administration Stores Depot and Regional Offices.
5.204 Order for supplies.

AUTHORITY: §§ 5.200 to 5.204 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 5.200 Applicability.

This part applies only to the procurement of supplies available from General Services Administration Stores Depots for delivery in the United States, its possessions or Puerto Rico. It does not apply to any item which:

- Is under the cognizance of the Defense Subsistence Supply Center or the Defense Medical Supply Center;
- Is being purchased for resale; or
- Costs \$25.00 or less.

§ 5.201 General.

It is the policy of the Department of Defense that for an item which has been decentralized for local purchase and

which is available from the General Services Administration Stores Depots, such items will be ordered from the depots unless delivery requirements cannot be met. The mandatory provisions of Department of Defense, General Services Administration Interagency Purchase Assignments (§ 5.1201-4) are not applicable to decentralized items which are within these assignments and which are available from the Stores Depots. Such items will be ordered in accordance with the above stated policy.

§ 5.202 GSA Stores Stock Catalog.

The General Services Administration "Stores Stock Catalog" sets forth, among other things, information with respect to items of supply carried in stock by the Stores Depots, prices and delivery information and a listing of the Stores Depots and General Services Administration Regional Offices. Copies of the Catalog may be obtained from any of the depots or offices listed in § 5.203.

§ 5.203 General Services Administration Stores Depots and Regional Offices.

The General Services Administration operates stores depots and regional offices located in or near the cities listed below, serving the areas indicated on the back cover page of the "Stores Stock Catalog". The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region	Address
1. Boston, Mass.-----	620 Post Office and Court House Building, Boston 9, Mass.
2. New York, N.Y.-----	250 Hudson Street, New York 13, N.Y.
3. Washington, D.C.-----	General Services Regional Office Building, Seventh and D Street SW., Washington 25, D.C.
4. Atlanta, Ga.-----	Peachtree Seventh Building, 50 Seventh Street N.E., Atlanta 23, Ga.
5. Chicago, Ill.-----	575 U.S. Court House, Chicago 4, Ill.
6. Kansas City, Mo.-----	2306 East Bannister Road, Kansas City, Mo.
7. Dallas, Tex.-----	P.O. Box 2488, Fort Worth, Tex.
8. Denver, Colo.-----	Denver Federal Center, Denver 25, Colo.
9. San Francisco, Calif.-----	49 Fourth Street, San Francisco 3, Calif. Orders for shipment by this depot should be directed to the San Francisco address.
10. Seattle, Wash.-----	c/o Naval Air Station, Seattle 15, Wash.

§ 5.204 Order for supplies.

Either DD Form 1155 or the DD Form 1348 series shall be used to obtain supplies from General Services Administration Stores Depots.

Subpart C—Procurement Through Federal Supply Service Consolidated Purchasing Programs

- Sec.
5.300 Applicability.
5.301 Federal Supply Service Consolidated Purchase Program.
5.302 DOD-GSA Interagency Purchase Assignments.
5.303 Order for supplies or services.

AUTHORITY: §§ 5.300 to 5.303 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 5.300 Applicability.

This subpart is applicable to the procurement of supplies and services within the United States.

§ 5.301 Federal Supply Service Consolidated Purchase Program.

In addition to providing supply sources through Federal Supply Schedules, the

General Services Administration conducts the National Buying Program through which purchase is made of definite quantities of selected items for direct delivery from vendors to receiving activity or to transshipping point for overseas delivery. If the items are not obtainable from Federal Supply Schedules or the General Services Administration Stores Depots in accordance with Subparts A and B of this part, requirements for items decentralized for local purchase within the following categories set forth below shall be placed with the General Services Administration Regional Office serving the ordering activity unless delivery requirements cannot be met:

- Items identified in § 5.1201-4 as being covered by the Department of Defense/General Services Administration Interagency Purchase Assignments; and
- Items covered by an agreement between the Administrator of the General Services Administration and the Secretary of the Department having management control of the items.

§ 5.302 DOD-GSA Interagency Purchase Assignments.

Mandatory use of the General Services Administration consolidated purchasing program is required for those centrally managed items covered by the interagency purchase assignments held by the General Services Administration as listed in § 5.1201-4.

§ 5.303 Order for supplies or services.

Purchasing activities shall submit a DD Form 1155 to the General Services Administration Regional Office of the region in which the activity is located when requesting purchase action in accordance with this subpart.

Subpart E—Procurement of Blind-Made Products

- Sec.
5.500 Applicability.
5.501 General.
5.502 Schedule of supplies which are blind-made.
5.503 Mandatory procurement of blind-made supplies.
5.504 Procurement procedure.
5.504-1 Through National Industries for the Blind.
5.504-2 From General Services Administration Stores Depots.
5.505 Clearances.
5.506 Optional procurement of blind-made products.

AUTHORITY: §§ 5.500 to 5.506 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 5.500 Applicability.

This subpart is applicable to supplies procured within the United States.

§ 5.501 General.

Supplies listed in the Schedule of Blind-Made Products shall be procured in accordance with the policies and procedures set forth in this subpart.

§ 5.502 Schedule of supplies which are blind-made.

Supplies manufactured by agencies for the blind are listed in the Schedule of Blind-Made Products, hereinafter referred to as the Schedule, copies of which may be obtained from any of the General Services Administration Regional Offices or Depots listed in § 5.203. Items available from stocks at General Services Administration Stores Depots are so identified in the Schedule.

§ 5.503 Mandatory procurement of blind-made supplies.

Except as provided in § 5.402, supplies listed in the Schedule shall be procured as follows:

- Orders for centrally managed supplies shall be placed through the National Industries for the Blind in accordance with § 5.504-1.
- Orders for supplies which have been decentralized for local purchase shall be submitted to the General Services Administration Stores Depot which can best serve the procuring activity or installation, except that when one of the conditions set forth below is present, procurement shall be through the National Industries for the Blind:
 - Supplies require overseas packaging or packing;

(2) Supplies are required in carload lots, as described in the Consolidated Freight Classification for the Commodity concerned;

(3) Supplies are stocked by General Services Administration Stores Depots, but the procuring activity or installation is so located that it is more practical and economical to purchase directly from the agency for the blind which manufactures the supplies, rather than from the stores depot;

(4) The Schedule indicates that the supplies are not stocked by General Services Administration Stores Depots; or

(5) Delivery requirements cannot be met.

(c) Supplies listed in the Schedule may be procured from commercial sources under any of the conditions set forth below without securing clearance:

(1) Military necessity requires delivery within two weeks and the NIB cannot give assurance of positive availability; or

(2) The procurement is for \$25 or less.

§ 5.504 Procurement procedure.

§ 5.504-1 Through National Industries for the Blind.

When procurement of blind-made supplies is to be effected through the National Industries for the Blind, such procurement shall be made by submitting directly to the National Industries for the Blind, 15 West 16th Street, New York 11, N.Y., a request, in letter form, for an allocation. Upon receipt of the request, requirements will be allocated by the National Industries for the Blind, and the procuring activity will be notified of the name and location of the agency designated to manufacture the requirements. Upon receipt of such notification, a delivery order (DD Form 1155) shall be issued to the designated agency for the blind and a copy thereof will be forwarded to the National Industries for the Blind. Such orders may be issued without limitation as to dollar amount and shall be recorded as obligations upon issuance.

§ 5.504-2 From General Services Administration Stores Depots.

When procurement of blind-made supplies is to be effected from a General Services Administration Stores Depot, such procurement shall be made by submitting a delivery order on DD Form 1155 (see § 16.303 of this chapter) to the General Services Administration Stores Depot which can best serve the procuring activity or installation.

§ 5.505 Clearances.

Except as provided in § 5.503(c), a purchasing activity may procure supplies of the types listed in the Schedule from commercial sources only to the extent that such procurement is specifically authorized in clearances issued by National Industries for the Blind, and then only if purchase action is initiated within thirty days from the date of the authorization or such additional period as may be authorized by the National Industries for the Blind.

§ 5.506 Optional procurement of blind-made supplies.

Supplies of any type or classification may be procured from agencies for the blind in any quantity, including less than carload lots, when such agency is the low bidder or offeror in response to an invitation for bids or request for proposals.

15. Section 5.901 is revised to read as follows:

§ 5.901 Policy.

In appropriate cases, the contracting officer should authorize the contractor to utilize General Services Administration supply sources in performing a cost-reimbursement type contract. Before issuing such an authorization, the contracting officer shall determine that it is in the best interests of the Government, considering price, delivery, contract administration, and recommendations of the contractor.

§ 5.903-3 [Amendment]

16. In § 5.903-3, change reference to "5.204" to read "§ 5.203."

17. Section 5.905 and the introductory portion of § 5.907 are revised to read as follows:

§ 5.905 Furnishing information to contractors.

Contracting officers shall assist contractors in obtaining pertinent Federal Supply Schedules (see § 5.101), the General Services Administration Stores Stock Catalog (see § 5.203), and other relevant information.

§ 5.907 Contract clause.

Insert the following clause in all cost-reimbursement type contracts under which the contractor may acquire supplies for the account of the Government.

* * * * *

PART 6—FOREIGN PURCHASES

18. Section 6.401-1 is revised; add "Cuba" to the list of countries in § 6.401-2; and revise § 6.403, as follows:

§ 6.401-1 General policy.

It is the general policy of the Department of Defense that supplies originating from sources within Soviet-controlled areas (except supplies which have been lawfully imported into the United States, its possessions, or Puerto Rico), shall not be acquired for public use, notwithstanding the provisions of any subpart of this part, and that Government contractors and subcontractors shall not acquire for use in the performance of any Government contract or subcontract thereunder any such supplies or services originating from Soviet-controlled areas.

§ 6.401-2 Soviet-controlled areas.

For the purpose of this subpart, Soviet-controlled areas are the following:

* * * * *
Cuba.

§ 6.403 Contract clause.

(a) Except as provided in paragraph (b) of this section, in contracts for supplies, services, or construction, where acceptance is to take place outside the United States, its possessions, or Puerto Rico, the Soviet-controlled areas listed in § 6.401-2 shall set forth in the contract schedule, and the following clause shall be included in the contract:

SOVIET-CONTROLLED AREAS (APR. 1962)

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or transported from or through Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including this subparagraph (b) and the Soviet-controlled areas listed in the Schedule, in all subcontracts hereunder.

(b) The requirements of paragraph (a) of this section do not apply to purchase orders for small purchases (see Subpart F, Part 3 of this chapter) where there is other reasonable assurance of compliance with the policy set forth in this subpart.

PART 7—CONTRACT CLAUSES

19. Section 7.102 is revised; new § 7.104-40 is added; and in § 7.203-7, revise clause heading in paragraph (a) and add new paragraph (c), as follows:

§ 7.102 Applicability.

As used throughout this subpart, the terms "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation, other than (1) purchase orders (but see §§ 7.104-15 and 7.104-16), (2) short form negotiated supply contracts (see § 16.202(b) of this chapter), (3) letter contracts, (4) notices of award, and (5) 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 § 3.404 of this chapter; 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 chapter.

§ 7.104-40 Competition in subcontracting.

The following clause shall be included in all negotiated contracts over \$10,000, except in firm fixed-price contracts where award is on the basis of effective price competition or where prices are established by law or regulation.

COMPETITION IN SUBCONTRACTING (APR. 1962)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent

with the objectives and requirements of the contract.

§ 7.203-7 Records.

RECORDS (APR. 1962)

(c) In the case of existing and completed contracts containing a record retention clause providing for a six-year period of retention, such contracts may be amended, or in the alternative, the retention of records may be administered in accordance with the following procedures.

(1) Upon request of the Contractor for a reduction in the retention requirement in designated existing contracts, individually or by blanket agreement, by substituting the appropriate clause from paragraphs (a) and (b) of this section. If the Contracting Officer deems it more expedient, he may instead notify the Contractor by letter, with copies to the Comptroller General, that with respect to designated contracts the purchasing activity thereby waives any requirement for retention of records beyond three years after the date of final payment under the contract (or, in the case of records relating to a separate period of performance of the kind referred to in the alternate subparagraph (a)(4) of the clause, set forth in paragraph (b) of this section, beyond three years from the date of payment of the voucher or invoice submitted by the Contractor after the completion of the work performed during any such separate period of performance).

(2) Where new procurement is being added to a contract or its completion or delivery date is being extended for other purposes, the appropriate clause from paragraphs (a) and (b) of this section may also be included and made applicable retroactively to the entire contract.

(3) With respect to any contract containing a six year record retention requirement, which has been completed for a period of not less than three years from the date of final payment thereunder, the Contractor is authorized to dispose of records under any such contract, except that records which relate to (i) appeals under the Disputes clause of the contract, (ii) litigation or the settlement of claims arising out of the performance of the contract, or (iii) cost and expenses of the contract as to which the Contractor has been notified in writing that questions have been raised by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or such questions have been resolved.

20. Section 7.203-8 is revised; new § 7.203-28 is added; and §§ 7.204-9 and 7.302-24 are revised, as follows:

§ 7.203-8 Subcontracts.

SUBCONTRACTS (APR. 1962)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000, including any fee; or (ii) is proposed to exceed \$100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed \$100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete and correct cost or pricing data accompanied, except when the requirement is specifically waived by the Contracting Officer, by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and

(4) Identification of the type of contract proposed to be used.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time and material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7-108 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit

mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (c) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and in (i) and (iv) thereof dollar amounts not in excess of \$10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures. The requirement for the certificate prescribed by paragraph (b)(3) of the clause may be waived at the discretion of the contracting officer if he is satisfied that the price has been based on effective competition, established catalog or market prices, or prices set by law or regulation. When required, the certificate shall be in the form set forth in § 3.807-7 of this chapter appropriately modified to reflect that it is a certificate to a prime contractor, rather than to the Government.

§ 7.203-23 Competition in subcontracting.

Insert the contract clause set forth in § 7.104-40.

§ 7.204-9 Rights in data.

In accordance with the requirements of Subpart B, Part 9 of this chapter, insert one of the contract clauses set forth in §§ 9.203-1, 9.204-2, or 9.206, as appropriate. When the contract clause in § 9.203-1 is used, the appropriate additional provisions shall be added in accordance with the requirements of §§ 9.203, 9.203-2, 9.203-3, or 9.203-4; and the additional provision in § 9.204-1 may be added under the circumstances set forth in § 9.204-1. When the clause in § 9.203-1 is used, the appropriate "Data—Withholding of Payment" clause in § 9.207 shall also be used.

§ 7.302-24 Basic Data Clause.

In accordance with the requirements of § 9.202 of this chapter, insert the clause set forth in § 9.203-1 of this chapter with appropriate additional or alternate paragraphs as prescribed by the instructions in §§ 9.203 and 9.204-1 of this chapter, and the appropriate "Data—Withholding of Payment" clause as set forth in § 9.207 of this chapter.

21. New § 7.303-27 is added; in § 7.402-8, revise the contract clause in paragraph (a) and revise paragraph (b); and revise § 7.402-23, as follows:

§ 7.303-27 Competition in subcontracting.

In accordance with the requirements of § 7.104-40, insert the contract clause set forth therein.

§ 7.402-8 Subcontracts.

(a) * * *

SUBCONTRACTS (APR. 1962)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000, including any fee; or (ii) is proposed to exceed \$100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed \$100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost of price analysis thereof, including current, complete and correct cost or pricing data accompanied, except when the requirement is specifically waived by the Contracting Officer, by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and

(4) Identification of the type of contract proposed to be used.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time and material or labor-hour basis, or (v) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tool-

ing, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7-108 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(b) In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (c) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and, in (i), (iv), and (v) thereof, dollar amounts not in excess of \$10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures. The requirement for the certificate prescribed by paragraph (b) (3) of the clause may be waived at the discretion of the contracting officer if he is satisfied that the price has been based on effective competition, established catalog or market prices, or prices set by law or regulation. When required, the certificate shall be in the form set forth in § 3.807-7 appropriately modified to reflect that it is a certificate to a prime contractor, rather than to the Government.

§ 7.402-23 Basic Data Clause.

In accordance with the requirements of § 9.202 of this chapter, insert the clause set forth in § 9.203-1 of this chapter with appropriate additional or alternate paragraphs as prescribed by the instructions set forth in §§ 9.203 and 9.204-1 of this chapter, and the appropriate "Data—Withholding of Payment" clause as set forth in § 9.207 of this chapter.

22. New § 7.402-29 is added; § 7.603-5 is revised; and new § 7.603-18 is added, as follows:

§ 7.402-29 Competition in subcontracting.

Insert the contract clause set forth in § 7.104-40.

§ 7.603-5 Rights in data.

In accordance with the requirements in Subpart B, Part 9 of this chapter, insert one of the contract clauses set forth in §§ 9.203-1, 9.204-2, or 9.206 of this chapter, as appropriate. When the contract clause in § 9.203-1 is used, the appropriate additional provisions shall be added in accordance with the require-

ments in §§ 9.203, 9.203-2, 9.203-3, or 9.203-4; and the additional provision in § 9.204-1, may be added under the circumstances set forth in § 9.204-1. When the clause in § 9.203-1 is used, the appropriate "Data—Withholding of Payment" clause in § 9.207 shall also be used.

§ 7.603-18 Competition in subcontracting.

In accordance with the requirements of § 7.104-40, insert the contract clause set forth therein.

PART 9—PATENTS, DATA AND COPYRIGHTS

23. In § 9.107-1, revise paragraph (d); in § 9.107-2(b), revise clause paragraphs (b)(1), (g), (h) and (i), and revoke clause paragraph (j); and new §§ 9.107-8, 9.207, 9.207-1, and 9.207-2 are added, as follows:

§ 9.107-1 General.

* * * * *

(d) *Contracting officer's duties.* (1) When a contract or modification thereof having experimental, developmental, or research work as one of its purposes is proposed, the contracting officer, in consultation with his technical and patent advisors, shall consider whether the contemplated project should entail Government acquisition of title in keeping with paragraph (c) of this section or similar considerations. If in his opinion it should, he shall refer the matter, with supporting information (including identification of any inventions on which patent applications are on file and which are expected to be actually reduced to practice under the proposed project), to higher authority, in accordance with the deviation procedures of § 1.109 of this chapter. If a deviation is authorized, the contracting officer shall insert in the contract the clause specified in § 9.107-2(c).

(2) In all cases not involving the acquisition of title in keeping with paragraph (c) of this section, the contracting officer shall include in the contract the clause specified in § 9.107-2(b), except as provided in § 9.107-3, concerning foreign contracts (unless the clause specified in § 9.107-2(c) has been authorized); § 9.107-4, concerning contracts relating to Atomic Energy; § 9.107-5, concerning contracts relating to Civil Defense; § 9.107-7, concerning contracts placed for the National Aeronautics and Space Administration; and § 9.107-8, concerning contracts relating to Space. In cases falling within these exceptions, the contracting officer shall follow the instructions stated in the applicable paragraph.

§ 9.107-2 Patent rights—Domestic contracts.

* * * * *

(b) *Contract clause (License).* * * * *

PATENT RIGHTS (LICENSE) (APR. 1962)

* * * * *

(b)(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, 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 the use of any method. Such license (i) shall be nontransferable, except that the Government shall have the right to grant sublicenses to any foreign government or international organization specifically for use in progress established by International Agreements for research, development or production of weapons or equipment for mutual defense, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

(g) The Contractor shall, unless otherwise authorized by the Contracting Officer as hereafter provided, include a patent rights clause containing all the provisions of this Patent Rights Clause except provision (f) in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, development, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor (i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter, and (ii) shall not proceed with the subcontract without the written authorization of the Contracting Officer. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, 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. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(i) The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this

policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges for such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(j) [Revoked]

§ 9.107-8 Contracts relating to space.

In order that inventions arising out of Department of Defense sponsored space research and development may be available for use for the benefit of the general public in communications satellite systems, whether such systems are operated by or for the Government or by private enterprise for the transmission of commercial or Government traffic, the paragraph set forth below, in lieu of paragraph (b)(1) of the Patent Rights clause prescribed in § 9.107-2(b) shall be inserted, except as provided in § 9.107-7, in any contract having as one of its purposes the performance of research and development work under a space program, project, or task:

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, 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 the use of any method. Such license (i) shall be nontransferable, except that the Government shall have (a) the right to grant sublicenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense and (b) the right to grant sublicenses to others, under such terms and conditions as may be prescribed, for the practice of any Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

§ 9.207 Data—Withholding of payment.

§ 9.207-1 General.

Timely delivery of required data is particularly important for competitive procurement of follow-on quantities of the contract items and of items broken out from an assembly or equipment. The clauses set forth in § 9.207-2 are designed to insure timely delivery of complete and current data. The clauses provide for a withholding of ten percent (10%) of the contract price, but the contracting officer may specify a lesser amount in the schedule if circumstances warrant. To insure effective enforcement of the clause, a case-by-case determination shall be made by the contracting officer after considering all pertinent factors, including whether the failure to make timely delivery, in accordance with the delivery schedule as originally provided or as modified, arises out of causes beyond the control and

without the fault or negligence of the contractor.

§ 9.207-2 Clauses.

(a) The following clause shall be inserted in all fixed-price contracts (except contracts with educational institutions) containing the clause set forth in § 9.203-1:

DATA—WITHHOLDING OF PAYMENT (APR. 1962)

If "Subject Data" (as defined in the clause of this contract entitled "Data"), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment to the Contractor of ten percent (10%) of the contract price unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default". 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.

(b) The following clause shall be used in all cost-reimbursement type contracts (except contracts with educational institutions) containing the clause set forth in § 9.203-1:

DATA—WITHHOLDING OF PAYMENT (APR. 1962)

If "Subject Data" (as defined in the clause of this contract entitled "Data"), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by the contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment due the Contractor on account of allowable costs and fixed fee, of ten percent (10%) of the contract price, unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause thereof entitled "Excusable Delays." 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.

PART 11—FEDERAL, STATE AND LOCAL TAXES

24. Sections 11.101-6, 11.102-2 (b) and (c), and 11.102-3 are revised, as follows:
§ 11.101-6 Special fuels.

(a) **Diesel fuel.** A tax at the indicated rates is imposed upon diesel fuel, other than that taxable as gasoline under section 4081 of the Internal Revenue Code (see § 11.102-4) which is (a) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle, or (b) used by any person as a fuel in a diesel-powered highway vehicle

unless there was a taxable sale of such liquid pursuant to (a) above, as follows:

(1) At 4 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle;

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highways; or

(2) At 2 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle;

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if fuel on which a tax of 2 cents was paid pursuant to subparagraph (2) of this paragraph, is used as fuel in a diesel-powered highway vehicle:

(i) Which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway.

No tax is imposed on diesel fuel sold for use or used as fuel in a nonhighway vehicle, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms.

(b) *Special motor fuels.* A tax at the rates indicated below is imposed upon benzol, benzene, naphtha, liquefied petroleum gas, or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel under paragraph (a) of this section, or as gasoline under section 4081 of the Internal Revenue Code (see § 11.102-4)), which is (a) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion thereof, or (b) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane, unless there was a taxable sale of such liquid pursuant to (a) above, as follows:

(1) At 4 cents per gallon, if such liquid is sold for use or is used as a fuel for a highway vehicle:

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway; or

(2) At 2 cents per gallon, if such liquid is sold for use or is used as a fuel for the propulsion of a motorboat or airplane, or motor vehicle:

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if a liquid on which a tax of 2 cents

was paid pursuant to subparagraph (2) of this paragraph, is used as fuel in a highway vehicle:

(i) Which, at the time of such use, is registered, or required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States is used on the highway.

(c) *Refunds and credits.* (1) A retailer, who has paid a tax on diesel fuel or special motor fuel, is entitled to a refund or credit of the tax paid, if such retailer has not included the tax in the sales price or otherwise collected the tax from the purchaser, has repaid the tax to the purchaser, or has the purchaser's written consent to take the refund or credit, as follows:

(i) A refund or credit of 4 cents or 2 cents per gallon, as appropriate, if a liquid upon which a tax of either 4 cents or 2 cents per gallon has been paid, is not used as fuel in a diesel-powered highway vehicle or to propel a motor vehicle, motorboat, or airplane;

(ii) A refund or credit of 2 cents per gallon, if diesel fuel, upon which a tax of 4 cents per gallon has been paid pursuant to paragraph (a)(1) of this section, is used as a fuel for a diesel-powered highway vehicle:

(a) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(b) Which, if owned by the United States, is not used on the highway; or

(iii) A refund of 2 cents per gallon, if special motor fuel, upon which a tax of 4 cents per gallon has been paid pursuant to paragraph (b)(1) of this section, is used to propel a motorboat or airplane, or motor vehicle:

(a) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(b) Which, if owned by the United States, is not used on the highway.

These refunds or credits shall be utilized, in accordance with Departmental procedures, by adjustment of the contract price whenever it is economically advantageous to do so.

(2) If the manufacturers excise tax on gasoline (see § 11.102-4) has been paid on any material used in the production of a special motor fuel taxable under paragraph (b) of this section, the manufacturer of the gasoline is entitled to a refund or credit of such tax, subject to the conditions similar to those stated in the opening lines of subparagraph (1) of this paragraph. The contract price for special motor fuels purchased by any Department shall not include an amount for manufacturers excise tax on gasoline used in the production of such special motor fuel.

§ 11.102-2 Motor vehicles.

* * * * *

(b) Chassis and bodies of automobiles, and of trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—10 percent; and

(c) Parts or accessories—when sold separately from an automobile, truck, or

other item taxable as indicated in paragraphs (a) and (b) of this section—8 percent. Parts or accessories are defined to include any article:

(1) The primary use of which is to improve, repair, replace or serve as a component part of a motor vehicle;

(2) Designed to be attached to or used in connection with a motor vehicle or to add to its utility or ornamentation; or

(3) The primary use of which is in connection with a motor vehicle whether or not essential to its operation or use.

§ 11.102-3 Tires and tubes.

(a) A tax at the rates indicated below is imposed on the following supplies, made wholly or in part of rubber, including synthetic and substitute rubber, sold by a manufacturer, producer, or importer:

(1) Tires of the type used on highway vehicles, which includes motor vehicles which are highway vehicles, and vehicles of the type used with motor vehicles which are highway vehicles—10 cents per pound;

(2) Other tires, which are designed to fit the wheel of any type of vehicle capable of transporting a person or burden (other than laminated tires which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent)—5 cents per pound;

(3) Inner tubes, which include any type of air container for pneumatic tires—10 cents per pound on total weight, including air valves and stems;

(4) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent—1 cent per pound; and

(5) Tread rubber, which includes any material commonly or commercially known as tread rubber or camelback of a type used in retreading or recapping tires—5 cents per pound. An exemption exists for the sale of tread rubber or camelback by a manufacturer to a purchaser for use by that purchaser other than for recapping or retreading tires of the type used on highway vehicles. In addition, if tread rubber, upon which the tax has been paid, is sold for use or is used other than for recapping or retreading tires of the type used on highway vehicles, the manufacturer is entitled to a refund or credit of the tax, provided, that the credit under paragraph (b) of this section is not available. The contract price for supplies purchased by any Department will not include an amount for the manufacturers excise tax on tread rubber to the extent that this exemption of refund or credit is available to the manufacturer. In determining weight of taxable tires under subparagraphs (1) and (2) of this paragraph, metal rims or rim bases are excluded, but any other material or fastening device that forms a part of the tire is included. The tax imposed under subparagraphs (1) and (2) of this paragraph, does not apply to tires which are not more than 20 inches in diameter and not more than 1¾ inches in cross-section, if such tires

are of all-rubber construction without fabric or metal reinforcement, nor does it apply to tires of extruded tiring with an internal wire fastening agent.

(b) The exemption for sales for further manufacture does not apply to taxable tires and tubes (see § 11.202). However, if tax-paid tires and tubes normally sold in connection with the sale by a manufacturer of a taxable motor vehicle are sold therewith, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturers purchase price on the tires and tubes. The contract price for supplies purchased by any Department shall not include an amount for manufacturers excise tax on tires and tubes to the extent that this credit is available to the manufacturer.

25. Sections 11.102-4, 11.102-13, 11.104(a), and 11.302 are revised, as follows:

§ 11.102-4 Gasoline.

(a) A tax of 4 cents per gallon is imposed on gasoline sold by a producer or importer. Gasoline means all products commonly or commercially known as gasoline, including casinghead and natural gasoline, but excluding kerosene, gas oil, or fuel oil, and also excluding any product taxable as a special motor fuel under section 4041 of the Internal Revenue Code (See § 11.101-6). The tax does not apply to the sale of gasoline to a producer, which is defined to include a refiner, compounder, blender, or dealer who sells gasoline exclusively to producers of gasoline.

(b) The ultimate purchaser of gasoline is entitled to a refund of 2 cents per gallon for gasoline used otherwise than as fuel in a highway vehicle; for example, gasoline used in stationary engines, in cleaning tools, in motorboats, aircraft, fork lift trucks, bulldozers and earth movers. Refunds will also be made on gasoline used as fuel in a highway vehicle:

(1) Which, at the time of such use is not registered, nor required to be registered, for highway use under the laws of any State or foreign country; or

(2) Which, if owned by the United States is not used on the highway.

In accordance with Departmental procedures, necessary data shall be compiled, to the extent economically advantageous, to support a direct application to the Internal Revenue Service for refund. Such application shall be in accord with pertinent requirements of the Internal Revenue Service.

§ 11.102-13 Pens, mechanical pencils, and lighters.

(a) A tax at the rates indicated below is imposed upon the sale by the manufacturer, producer, or importer of the following articles:

(1) Mechanical pencils, fountain pens and ballpoint pens—10 percent;

(2) Mechanical lighters for cigarettes, cigars, and pipes—10 cents for each lighter but not more than 10 percent of the price for which so sold.

(b) The tax on pens, mechanical pencils, and lighters does not apply if the

article also is subject to the retailers excise tax on jewelry imposed by section 4001 of the Internal Revenue Code. If the manufacturers excise tax has been paid, but the article is further processed so as to subject it to the retailers excise tax, the retailer (but not the manufacturer who originally paid the tax) is entitled to a credit to the extent of the manufacturers excise tax paid on the article. (See § 11.101-2.)

§ 11.104 Use tax on highway motor vehicles.

(a) A tax of \$3.00 a year for each 1,000 pounds of taxable gross weight, or fraction thereof, is imposed upon the use of any highway motor vehicle which, together with semitrailers and trailers customarily used in connection with a vehicle of this type, has a taxable gross weight in excess of 26,000 pounds. The full tax is due for any vehicle which is used on the public highways of the United States at any time during the month of July, irrespective whether the vehicle is later removed from highway use. If the first use of a taxable vehicle occurs after the end of July, the tax is computed proportionately from the first day of the month in which the vehicle is first used, through the end of the following June. For example, if a vehicle is placed in use during August, $\frac{1}{12}$ of the total tax is payable. No tax applies to vehicles, even though of a highway type, which are never used on the public highways during the taxable year.

§ 11.302 Tax exemption forms.

Except when a different form is required by a particular State or local tax jurisdiction, Standard Form 1094 Revised (U.S. Government Tax Exemption Certificate) shall be used in accordance with agency procedures. Unless the contract under which the exemption is claimed otherwise requires, an exemption certificate will not be issued if the amount of the taxes on any one invoice or purchase is one dollar or less.

PART 12—LABOR

26. Section 12.603(d) is revised to read as follows:

§ 12.603 Responsibilities of contracting officers.

(d) Prepare and transmit three copies of DD Form 350 (top portion), as provided in §§ 16.803-2(c) and 16.901-4(p) of this chapter; where a contract of \$10,000 or less is modified to exceed \$10,000 the report on DD Form 350 shall be prepared and transmitted in accordance with § 16.901-4(p) of this chapter.

PART 13—GOVERNMENT PROPERTY

27. Section 13.101-17 is revised, and in § 13.102-3, paragraphs (a) and (c) are revised and new paragraph (d) is added, as follows:

§ 13.101-17 Educational or other nonprofit organization.

Educational or other nonprofit organization means any corporation, founda-

tion, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

§ 13.102-3 Facilities.

(a) (1) It is the policy of the Department of Defense that contractors will furnish all industrial facilities required for the performance of Government contracts, except in the limited situations described in subparagraph (2) of this paragraph. Accordingly, the Government shall not include in competitive solicitations an offer to purchase and furnish industrial facilities or to have them acquired for its account. This does not preclude the Government from offering to furnish existing Government-owned industrial facilities.

(2) Industrial facilities may be provided by the Government only when it is determined that:

(i) It is not possible to obtain contract performance without Government-owned industrial facilities; or

(ii) Contractor-furnished industrial facilities would likely result in allocations of costs to the contract in excess of reasonable depreciation costs; or

(iii) Furnishing of existing Government-owned industrial facilities will most likely result in substantially lower cost to the Government of the items produced, after taking into account transportation costs, maintenance costs, reactivation costs, and any other costs for the furnishing of such facilities; and

that it is otherwise in the best interest of the Government. Before the Government agrees to provide industrial facilities, the contractor shall be required to show that subcontractors possessing adequate and available capacity to meet military production requirements have been or will be appropriately and fully utilized.

(3) In the case of industrial facilities having an acquisition cost of 41,000,000 or more, the determination required by subparagraph (2) of this paragraph shall be made by the cognizant Secretary, subject to paragraph (d) of this section.

(c) The policy for authorizing special use allowances for research facilities acquired by educational institutions is contained in § 4.209 of this chapter.

(d) All proposed purchases or acquisitions of industrial facilities involving an expenditure of \$1,000,000 or more shall be forwarded to the Secretary of Defense for his approval through the Office of the Assistant Secretary of Defense (I&L).

28. In § 13.505, revise clause heading and the introductory statement for alternative paragraph (c), as follows:

§ 13.505 Government-furnished property clause for fixed-price type contracts with nonprofit institutions.

GOVERNMENT-FURNISHED PROPERTY
(APR. 1962)

In accordance with 4-214.4(d), the following alternative paragraph (c) may be used:

* * * * *

29. In § 13.506, revise clause heading and the explanatory note in clause paragraph (c); and revise clause paragraph (i) (5) and the footnote, as follows:

§ 13.506 Government property clause for cost-reimbursement type research and development contracts with non-profit institutions.

GOVERNMENT PROPERTY (APR. 1962)

In accordance with 4-214.4(d), the following additional language may be added to paragraph (c):

(1) * * *

*(5) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

*This subparagraph may be omitted where it is clearly inapplicable.

30. Subpart H, Transfer of Title to Equipment to Nonprofit Education or Research Institutions, is revoked.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

§ 15.304 [Amendment]

31. In § 15.304, the reference to "§ 3.812" in paragraph (e) is changed to read: "§ 4.209."

PART 16—PROCUREMENT FORMS

32. Section 16.810-2 is revised, as follows:

§ 16.810-2 Conditions for use.

The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive Invitations for Bids and Requests for Proposals.

PART 17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

33. Section 17.201 is revised; the last sentence of paragraph (a), § 17.203, is revised; and a new paragraph (d) is added to §§ 17.207-1 and 17.207-3, as follows:

§ 17.201 Authority of the Secretaries and the Director, DSA.

(a) The Secretary of each Department may delegate in writing his authority under the Act and the Executive Order, subject to the following limitations:

(1) Authority to approve actions under the Act obligating the United States in

an amount in excess of \$50,000 shall not be delegated below the Secretarial level; and

(2) Authority to approve any amendment without consideration which increases the stated contract price or unit price may not be delegated below the Secretarial level except in extraordinary cases or classes of cases as to which the Secretary involved finds that there are special circumstances clearly justifying delegation to a lower level.

(b) The Director of the Defense Supply Agency may exercise authority under the Act and the Executive Order in all cases obligating the United States in the amount of \$50,000 or less, and in disapproving proposed action in any amount. This authority may be redelegated, consistent with the provisions of this Section. Recommendations for payments in excess of \$50,000 will be submitted by the Director to the Assistant Secretary of Defense for Installations and Logistics for approval.

(c) The delegations described in §§ 17.202 and 17.203 shall not be construed as limiting the authority of the Secretaries or the Director to modify or make other delegations. Copies of all delegations and successive redelegations shall be transmitted to the Assistant Secretary of Defense for Installations and Logistics at the time of issuance.

§ 17.203 Authority of other officers and officials.

(a) * * * The foregoing authority may be redelegated only with the written approval of the Secretary concerned or the Director.

§ 17.207-1 Filing requests.

(d) In the Defense Supply Agency, Commanders of the Defense Supply Centers concerned.

§ 17.207-3 Records.

(d) Defense Supply Agency activities, to Headquarters, DSA.

34. In § 17.208-3(c), add new subparagraph (3); and revise §§ 17.208-5, 17.301, and 17.304, as follows:

§ 17.208-3 Submission of cases to the Contract Adjustment Board.

(c) Forwarding to Boards. Cases to be submitted to the boards shall be forwarded through the following channels:

(3) In the Defense Supply Agency, each case shall be sent to Headquarters, DSA for further processing.

§ 17.208-5 Maintenance of records.

The records required by §§ 17.207-3, 17.208-2(b), and 17.208-4 (a) and (b) shall be maintained in the Army by DCSLOG, in the Navy and Air Force, by the respective Boards, and in the Defense Supply Agency, by Headquarters, DSA.

§ 17.301 Delegations of authority.

Authority to take actions under the residual powers of the Act is vested in the Secretary of each Department and may be defined and delegated in writing by him within his Department; provided, however, that authority to approve actions obligating the United States in excess of \$50,000 shall not be delegated below the Secretarial level, and authority to approve actions obligating \$50,000 or less shall not be delegated below the Head of a Procuring Activity in the Army, the Navy and the Defense Supply Agency and, in the Air Force, the Director of Procurement and Production, Headquarters, AMC. Copies of all delegations and successive redelegations shall be transmitted to the Assistant Secretary of Defense for Installations and Logistics at the time of issuance.

§ 17.304 Maintenance of records.

DCSLOG in the Army, the respective Contract Adjustment Boards in the Navy and the Air Force, and Headquarters, DSA in the Defense Supply Agency, shall be responsible for maintaining two copies of each Memorandum of Approval required by § 17.303(b).

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

35. In § 30.1, Part 1 is revised as follows:

§ 30.1 Appendix A—Armed Services Board of Contract Appeals.

PART 1—CHARTER

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining as fully and finally as might each of the Secretaries appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the provisions of contracts requiring the decision of appeals by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (b) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract. The Board shall operate under general policies established or approved by the Assistant Secretary of Defense (Installations and Logistics).

(2) Membership of the Board shall consist of qualified attorneys who have been admitted to practice before the highest court of any State or the District of Columbia. There shall be appointed from members of the Board a chairman and two vice-chairmen. Appointment of the chairman and vice-chairman and other members of the Board shall be made jointly by the Assistant Secretary of Defense (I&L) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairman shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Assistant Secretaries will also designate the order in which the two vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman will designate a member of the Board to serve as a temporary vice-chairman.

(3) It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on

the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

(4) The chairman of the Board shall be responsible for establishing appropriate divisions of the Board in such manner as to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the Military Department or other procuring agency which entered into the contract involved. A division may consist of one or more members of the Board. A majority of the members of a division shall constitute a quorum for the transaction of the business of the division and the decision of a majority of the division shall constitute the decision of the Board provided that the chairman and two vice-chairmen jointly signify their approval of the decision. If a majority of the members of a division are unable to agree on a decision, or if the chairman or one or more of the vice-chairmen do not signify approval of the decision, determination of the appeal shall be made by the chairman and vice-chairmen. A decision by a majority of those individuals will constitute the decision of the Board. On request of the appellant, an appeal involving \$5,000 or less shall be decided under accelerated procedures as provided by the Rules of the Board.

5. When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may nevertheless in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. When in the consideration of an appeal it appears that a claim is involved which is not cognizable under the terms of the contract, the Board may, insofar as the evidence permits, make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

6. When a contract requires the Secretary of Defense or the Secretary of a Military Department, personally, to render a decision on the matter in dispute, the Armed Services Board of Contract Appeals, in accordance with the procedure set forth in paragraph 4, shall make findings and recommendations to the appropriate Secretary with respect thereto.

7. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Assistant Secretary of Defense (I&L) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies of the Department of Defense shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

8. Any member of the Board or any examiner, designated by the chairman of the Board, shall be authorized to hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument, to the designated division for consideration and determination of the appeal.

9. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of

the Board with nonmember personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

10. Financing of the operations of the Board as authorized herein will be provided through the use of the Navy Management Fund in accordance with Department of Defense Regulations Covering the Operation of Management Funds.

11. The chairman of the Board will furnish to the Secretary of Defense and to the Secretaries of the Military Departments by July 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Assistant Secretary of Defense (I&L), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Supply Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

12. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals". This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

13. All appeals pending before the Board under the "Charter for the Armed Services Board of Contract Appeals", which became effective on February 1, 1959, shall continue to be subject to the jurisdiction of the Board as established hereunder.

14. This charter will become effective May 1, 1962.

[ASPR, Rev. 9, 15 April 1962] (Sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 62-6252; Filed, June 28, 1962; 8:45 a.m.]

Chapter V—Department of the Army

SUBCHAPTER D—MILITARY RESERVATIONS AND NATIONAL CEMETERIES

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

Acquisition of Real Estate and Interests Therein; Miscellaneous Amendments

1. Section 552.34 is revised to read as follows:

§ 552.34 Policies relative to new acquisition.

(a) *Present holdings inadequate for essential mission.* No request to acquire real estate by transfer from Navy or Air Force or from another Government agency, or by purchase, lease or condemnation will be considered or approved unless it is established that:

(1) The activity to be accommodated is essential to an assigned mission.

(2) Real property under the control of the Army is inadequate to satisfy these requirements.

(3) No real property under the control of the Navy or Air Force or other Federal agencies is suitable and available for use by the Army on a permit or joint use basis.

(b) *Order of priority for method of acquisition.* If the activity qualifies as essential to an assigned mission but the need cannot be filled by the use of other Army property or other Federal property on a permit or joint use basis, the following alternatives will be considered in the order listed:

(1) Donation or long-term nominal rental lease.

(2) Transfer from Navy or Air Force. Acquisition of lands excess to the requirements of other military departments.

(3) Recapture of use.

(4) Public Domain. Withdrawal from the public domain for military use. (Public Law 85-337, Feb. 28, 1958 (72 Stat. 28) requires that an Act of Congress be obtained to withdraw, reserve, or restrict for defense purposes more than 5,000 acres of the public domain.)

(5) Acquisition by exchange. Exercise of existing authorities for the exchange of Government-owned real property for non-Government-owned real property that is by type or location adaptable to the military need.

(6) Transfer from other Federal agencies. Acquisition of lands excess to the requirement of Federal agencies other than military departments.

(7) Acquisition by purchase, lease or condemnation.

(c) *Current requirements given preference.* In considering the use of Army real property by another military department, current requirements will, in the absence of unusual circumstances, be given preference over future needs and mobilization requirements. If the current requirement will not continue through mobilization, care must be exercised to avoid modification of the property in a manner that would prevent its timely return to the holding department to meet the mobilization requirement. If it is contemplated that the current requirement will continue through mobilization, the property may be modified as required and the mobilization plans of the military departments concerned should be changed accordingly.

(d) *Firm requirements and minimum acquisition.* Requirements in each individual case will be firmly determined and only the minimum amount of property necessary will be acquired.

(e) *Factors considered insufficient justification for acquisition by lease.* Desirability of location in an urban area, reduced travel time for employees or business representatives, nominal savings in transportation costs, environmental considerations (such as noise or traffic), or desirability of single unit offices instead of split locations in close proximity will not be considered sufficient justification for acquiring leased space or facilities when Government-owned property is available. For exceptions, see paragraph (f) of this section.

(f) *Special location considerations.* Acquisition of title or a leasehold interest in real property may be justified where it is demonstrated that the func-

tion to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment of the assigned mission. Examples that may fall in this group are recruiting stations (exclusive of kindred examining and induction units), airbases, air defense sites, and sites for construction of facilities for Reserve Components of the Armed Forces.

(g) *Army Reserve training sites.* In general, title to lands will not be acquired for exclusive use as training sites. Training sites will be acquired by one of the following means in the order listed:

(1) Use of lands under the control of the Department of the Army regardless of the agency maintaining jurisdiction, to include class II and industrial installations and other Reserve Component facilities, see title 10 U.S.C. 2331 and 2237.

(2) Use of reservoir lands of Civil Works Projects. By informal agreement with the Resident Engineer or Manager (when training activities do not involve exclusive use, construction, or destruction of vegetation) or by permit from the District Engineer (for other activities when such activities are compatible with the operation and maintenance of the project and will not endanger the use by the general public of public access areas).

(3) Use of lands, by permit or otherwise, under the control of the other military departments.

(4) Use of lands by permit of other Government-owned land, including the public domain.

(5) Use by license or nominal rental lease of local, county, or State-owned public lands.

(6) Use of privately owned land by short-term co-use lease under the authority granted in § 552.39.

(7) Use of non-Government-owned land by lease.

(8) Acquisition of lands excess to the requirements of the other military departments.

(9) Acquisition of lands excess to the requirements of Federal agencies other than the military departments.

(10) Acquisition of the non-Government-owned land.

(11) As a rule of thumb, lands will not be acquired for training from any source when the value of the land exceeds that of rural farm land in the area.

(h) *Public notice and release of information relative to proposed real estate acquisitions.* It is the policy of the Department of the Army to give notice to the public and to release information to the public as early as possible (at the site selection stage) and as completely as possible, consistent with existing regulations. Even though opposition may develop in some cases because of early release of information as to proposed acquisitions, application of this policy should more often result in favorable public relations, general public support of proposed acquisitions, and material assistance in the selection of sites which will fulfill the military requirement and still have the least impact on the civilian economy. This policy will permit con-

sideration of public preferences in the establishment of military facilities. Section 302 of the Act of July 14, 1960; Public Law 86-645, which is applicable to military as well as water resources public works projects, provides for dissemination of information on large new installations.

(1) *Restrictions relating to Agency Budget Estimates and Presidential Budget Recommendations.* Bureau of the Budget Circular No. A-10, as revised, places restrictions on disclosure of Agency Budget Estimates and Presidential Budget Recommendations. It provides that budget recommendations and estimates are administratively confidential until made public through formal transmittal of the budget to Congress. Public notice and release of information relative to proposed real property acquisitions will, therefore, exclude any information as to whether the proposed acquisition has been included in a pending budget not yet formally transmitted to the Congress or is to be included in a future budget. Public notice and release of information will be on the basis of "advance planning."

(2) *General application and exceptions.* Non-Government-owned real property generally is acquired by negotiations, based on its fair market value, as established by Government appraisal and regardless of who the owner is, how much the owner paid for the property, and how long the owner has owned the property. For this reason, public notice and release of information should not tend normally to increase the value of the land involved or create speculation therein. Experience has proved that interest of the Government in specific real property normally tends to discourage trafficking therein. Though normally the release of information should not result in subsequent disadvantage to the Government, information will not be released in any specific case where it might have that result. AR 345-15 applies to the acquisition of real property only in those instances in which the release of advance information on proposed plans might provide undue discriminatory advantage to private or personal interests.

(3) *Application to Army Reserve facilities.* During the preliminary site selection stage for Army Reserve facilities, the Army commander's representative will contact responsible local public officials to explain the nature of the proposed facility and to obtain their concurrence in the Army's acquisition and use of the site tentatively selected. Such a statement, including the names and titles of officials contacted, will be furnished by the Army commander to the District Engineer for inclusion in the Real Estate Planning Report. Release of information on Army Reserve centers will be made only by an authorized representative of the Army commander.

(i) *Use of unappropriated and non-navigable water.* It is the policy of the Department of the Army to utilize unappropriated and nonnavigable water upon or under lands under jurisdiction in such a manner as is consonant with the purposes of water laws which have been enacted by the several States.

(j) *Permanent construction.* If permanent construction, defined as that which produces a building suitable and appropriate to serve a specific purpose for a maximum period of time (at least 25 years) and with a minimum of maintenance, is to be constructed by the Government, the Government must either hold or acquire title to the land (inclusive of all mineral rights and improvements) or a permanent easement interest, with the following exceptions:

(1) *Right of reuse by exercise of National Security Clause.* Property, including land or buildings, over which the Government currently holds the right of reuse by exercise of the National Security Clause.

(2) *Right of reuse by exercise of National Emergency Use Provision.* Property, including land or buildings, over which the Government holds the right of reuse by exercise of a National Emergency Use Provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by the President or the Congress and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years.

(3) *Rights-of-way.* Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of \$1 per term or per annum.

(4) *Airbase.* Property required for airbases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years.

(ii) A rental consideration of \$1 per term or per annum.

(iii) Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for "Government purposes" rather than for a specific purpose.

(5) *Reserve Components facilities.* Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in subparagraph (4) (i), (ii), (iii), and (iv) of this paragraph. When possible the insertion in a lease of provision restricting the use of the land to a specific purpose will be avoided; use of a term as "Government purposes" should be employed, whenever possible.

(6) *Air defense sites.* Property required for air defense sites provided such property can be acquired by lease containing provisions detailed in subparagraph (4) (i), (ii), and (iv) of this paragraph and in addition thereto a right of continuous use by the Government under a firm term or right of re-

newal for as long as required for defense purposes.

(7) *Exception by Assistant Secretary of Defense (Installations and Logistics).* Where leases (for airbases, facilities for Reserve Components of the Armed Forces, or air defense sites) can be obtained containing some but not all of the above-listed provisions or where leases (for all other types of installations upon which permanent construction is to be placed by the Government) can be obtained containing similar provisions and it is considered to be to the best interest of the Government to acquire a lesser interest than fee title, it will be necessary to obtain approval from the Assistant Secretary of Defense (Installations and Logistics) prior to placing permanent construction thereon.

(8) *Construction projects not in excess of \$25,000.* Construction projects estimated to cost not in excess of \$25,000 will not be considered as permanent construction for purposes of applying the above policy.

(9) *Industrial installations.* See paragraph (1) of this section.

(k) *No permanent construction.* Where temporary construction or no construction is to be placed by the Government, acquisition of a lesser interest (leasehold, easement, license, as appropriate) will generally be considered to be in the best interest of the Government, with the following exceptions:

(1) *Cost of construction.* Where any proposed temporary construction to be placed by the Government has an estimated cost equal to or in excess of the current market value of the property.

(2) *Rent plus restoration.* Where the calculated period of required use is of sufficient duration that the sum expended for rentals over this period plus restoration, if required, would exceed 50 percent of the current market value of the property. (Apply calculated period of required use or 20 years, whichever is less.)

(3) *Easement costing 75 percent of fee value.* Where the cost of acquiring an easement right exceeds 75 percent of the current fair market value of the property.

(1) *Industrial installations—(1) Definitions.* Industrial facilities as used herein are defined as plants, buildings, utilities, improvements, and additions and appurtenances thereto used for military production and related purposes, including testing and development. Nonseverable industrial facilities as used herein are defined as industrial facilities located on other than Government-owned land, and which, after erection or installation, cannot be removed without substantial loss of value or damage thereto, or to the premises where installed.

(2) *Policy.* Industrial facilities will be located on land owned by the Government or in which the Government has a permanent, disposable interest. Nonseverable industrial facilities will be located on land in which the Government has a disposable interest equal in term to the estimated useful life of the facilities, unless the Head of a Procuring Activity, with consideration to any non-recoverable costs involved, determines that such location is not feasible. If the

Head of a Procuring Activity makes this determination, he may authorize the location of such facilities on other land, provided:

(i) The estimated useful life of the facilities will not extend beyond the contract under which the facilities are installed or the completion of the work for which the facilities are provided; or

(ii) The contractor agrees to purchase the facilities upon the end of the facilities contract at the acquisition cost of the facilities, less depreciation; or

(iii) The Secretary approves other provisions as being in the interest of national defense.

(iv) If location on land in which the Government does not have a disposable interest, as above set out, is authorized under subdivision (i), (ii), or (iii) of this subparagraph, the Government must have the right to abandon the facilities in place, with no obligation to restore or rehabilitate the facilities or the premises on which they are located.

(m) *Commercial and industrial type facilities—(1) Policy.* Privately owned or Government-owned and privately operated commercial and industrial type facilities will be used to the greatest extent practicable, recognizing the basic military necessity for integrated, self-sustaining units responsible to command and the necessity for operating anywhere in the world. It is the policy of the Department of the Army not to engage in the operation of industrial or commercial type facilities unless it can be demonstrated that it is necessary for the Government itself to perform the required work or service.

(2) *Definition.* Commercial and industrial type facilities are defined as those devoted to an activity which normally might be performed by private industry (except commissaries, post exchanges, and nonappropriated fund activities) including, but not limited to, warehouses, motor repair shops, bakeries, laundries, and drycleaning facilities.

(n) *Department of Defense policy relative to liaison with Governor of Commonwealth of Puerto Rico.* By letter dated August 19, 1953, the Secretary of Defense informed the Governor of the Commonwealth of Puerto Rico that the Department of Defense would establish liaison with the Governor to coordinate all military requirements for land acquisition in Puerto Rico. By memorandum dated August 19, 1953, the Secretary of Defense instructed that such liaison would be established under the direction of the Department of the Army, in coordination with the other interested services. On September 8, 1953, the Department of the Army requested the Commander in Chief, Caribbean Command, to establish such liaison. Liaison is being maintained locally between the Commandant of the Caribbean Sea Frontier and the Chairman of the Puerto Rico Planning Board. The liaison applies to the proposed acquisition of title or any interest in land which is other than (Federal) Government-owned land. In all cases, liaison action will be initiated during the advance planning or site selection stages. The purpose is to give Puerto Rican officials advance notice of

military real property requirements and to give them an opportunity to suggest suitable alternatives in an effort to improve public relations with Puerto Rican officials, landowners, and the general public.

2. In § 552.37, paragraphs (a), (c) (2), and (e) are revised, as follows:

§ 552.37 *Acquisition by Chief of Engineers.*

(a) *Statutory authority.* The Chief of Engineers, under the direction of the Secretary of the Army, is charged with the acquisition of all real estate for the use of the Department of the Army (10 U.S.C. 3038).

(c) *Delegated authority.* * * *

(2) Leasehold acquisition where the estimated annual rental for any single leasehold does not exceed \$25,000 and the acquisition is not contravertial, unusual, or inconsistent with Department of Army policies.

(e) *Responsibility for all negotiations.* To avoid any possibility of misunderstanding by property owners and resultant embarrassment to the Department of the Army, under no circumstances will commitments be made either by negotiation or by dissemination of information to property owners, by any authority other than the Chief of Engineers. This is not intended to restrict the public notice and release of general information as set forth in § 552.34(h).

([AR 405-10, May 28, 1962] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012))

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 62-6291; Filed, June 28, 1962;
8:45 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 5—General Services Administration

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 5 of Title 41 is amended as follows:

PART 5-1—GENERAL

Sections 5-1.602(b) (1), 5-1.605(a), 5-1.606-55, 5-1.606-56, 5-1.606-57, are revised, to read as follows:

§ 5-1.602 Establishment and maintenance of a list of firms or individuals debarred or ineligible.

(b) * * *

(1) Publication of the GSA Debarred Bidders List shall be based, in the case of GSA administrative debarments, on determinations made by the service performing the debarment, or confirmation of such debarment by the Administrator (or his designee); and in the case of statutory debarments on appropriate notification by the Comptroller General, the Secretary of Labor, or other debarring agency.

§ 5-1.605 Causes and conditions applicable to determination of debarment by an executive agency.

(a) Administrative debarments by GSA shall be made by the Commissioner of the procuring service primarily concerned in accordance with procedures set forth in § 5-1.606.

§ 5-1.606-55 Institution of debarment proceedings.

If a Commissioner decides to institute debarment proceedings, he shall send a letter by certified mail (return receipt requested) to the firm or individual proposed for debarment. The letter shall summarize the facts on which the debarment is predicated, specify a reasonable and definite period for the debarment, and advise that, unless a request for a hearing is received within 15 days from the date of receipt of such letter, the debarment will become effective when the 15-day period has elapsed. When debarment action is based on debarment by another agency, the firm or individual shall be so notified. However, no hearing is required in such cases, pursuant to § 1-1.605(b)(6). The Compliance Division shall be notified of this action.

§ 5-1.606-56 Hearings.

Hearings requested in connection with debarment proceedings shall be conducted before the Administrator or his designee, referred to in this § 5-1.606-56 as the reviewing authority. An opportunity shall be afforded to the firm or individual to appear, with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, the reviewing authority shall make a decision based on the facts on record and such additional evidence as may be furnished by the parties involved.

(a) The reviewing authority shall give notice of the date and place of hearing to the appropriate Commissioner and to the Office of General Counsel.

(b) Hearings shall be held by the reviewing authority within 30 days after the receipt of the request for a hearing, unless the reviewing authority considers that additional time should be granted.

(c) If a firm or individual who requested a hearing is determined by the reviewing authority to be responsible for any unreasonable delay in disposing of the matter, the reviewing authority shall authorize the Compliance Division to place such firm or individual on the GSA Debarred Bidders List pending final action by the reviewing authority. A copy of such notification shall be furnished to the Commissioner who initiated the debarment action.

(d) After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

§ 5-1.606-57 Notice of final decision in debarment proceedings.

When an intended debarment is upheld by the Administrator or his designee, referred to in this § 5-1.606-57 as the reviewing authority, as the result of

a hearing, or as the result of forfeiture of the right to be heard, the reviewing authority shall notify the firm or individual of the decision confirming the intended debarment, setting forth the period during which such debarment shall be effective. The period shall be equivalent to that originally imposed by the debarring Commissioner. If an intended debarment is not upheld by the reviewing authority, the reviewing authority shall so notify the firm or individual. Copies of such notification shall be furnished to the interested Commissioner, and to the Compliance Division for action to include the firm or individual in the GSA Debarred Bidders List or for retention without action, as appropriate.

§ 5-1.606-58 Inquiries from debarred or ineligible bidders.

Inquiries presented by debarred or ineligible bidders shall not be discussed but referred to the Office of General Counsel.

§ 5-1.607 General Services Administration responsibility.

§ 5-1.607-51 Consolidated List of Administrative Debarments by Executive Agencies.

(a) The Compliance Division compiles and arranges for the distribution of the Consolidated List of Administrative Debarments by Executive Agencies, and provides necessary related background material to other agencies, as set forth in § 1-1.607, under Reports Control Symbol AA-5.

(b) Notices issued by other agencies and furnished to GSA in accordance with § 1-1.606(c) are collected, processed, and disseminated by the Compliance Division as set forth in § 1-1.606(e) and § 1-1.607.

PART 5-53—CONTRACT ADMINISTRATION

Sections 5-53.602, 5-53.603, and 5-53.604 are deleted and revised; §§ 5-53.602 and 5-53.603 are added, to read as follows:

§ 5-53.602 Notice to contractor.

When a contracting officer has decided a disputed matter involving a question of fact, the contractor shall be notified of such decision in writing. The notice shall contain a paragraph substantially as follows:

This is the final decision of the contracting officer. Decisions on disputed questions of fact and on other questions that are subject to the Disputes clause may be appealed in accordance with the provisions of the Disputes clause. If you decide to make such an appeal from this decision, the appeal (in triplicate) addressed to the Administrator of General Services, General Services Administration, General Services Building, Washington 25, D.C., must be mailed or otherwise furnished to the contracting officer within thirty days from the date you receive this decision. Such appeal should refer to this decision and identify the contract. Pending final decision of the dispute, you shall proceed diligently with the performance of the contract and in accordance with this contracting officer's decision.

§ 5-53.603 Appeals.

Upon receipt of an appeal or notice of appeal, the rules set forth in Subpart 5-60.2 shall be observed.

Part 5-60 is added, to read as follows:

PART 5-60—CONTRACT APPEALS

Sec.	Scope of part.
5-60.000	Scope of part.
Subpart 5-60.1—General Policy	
5-60.101	Jurisdiction for considering appeals.
5-60.102	Organization and location of the Board.
5-60.103	Receipt and disposition of appeals.
5-60.104	Board of Contract Appeals procedure.
5-60.104-1	Rules.
5-60.104-2	Appearance of witnesses for GSA.
5-60.104-3	Distribution of decisions.
5-60.105	Annual report.
Subpart 5-60.2—Rules of the General Services Administration Board of Contract Appeals	
5-60.201	Notice of appeal.
5-60.202	Contents of notices of appeal.
5-60.203	Preparation of the appeal file.
5-60.204	Scope of appeals.
5-60.205	Untimely appeals.
5-60.206	Conferences.
5-60.207	Hearings.
5-60.208	Submission without a hearing.
5-60.209	Absence of parties.
5-60.210	Nature of hearings.
5-60.211	Examination of witnesses.
5-60.212	Copies of papers.
5-60.213	Transcript of proceedings.
5-60.214	Representation.
5-60.215	Submission of additional information.
5-60.216	Decisions.
5-60.217	Reconsideration of appeals.
5-60.218	Extensions of time.
5-60.219	Optional accelerated procedure for cases involving small sums.
5-60.220	Payment of claims.

§ 5-60.000 Scope of part.

This part establishes policies and procedures regarding matters to be considered by the Board of Contract Appeals, and the rules of the Board.

Subpart 5-60.1—General Policy

§ 5-60.101 Jurisdiction for considering appeals.

(a) Except as stated in (b) below, the General Services Administration Board of Contract Appeals (referred to in this Part 5-60 as "the Board") shall consider and determine appeals from decisions of contracting officers and other officials of GSA arising under contracts which contain provisions requiring the determination of appeals by the head of an agency or his duly authorized representative or board, and as otherwise authorized by the Administrator. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Administrator himself.

(b) The Administrator reserves the right to direct that the authority of the Board shall not be exercised where he may desire or be required to render a decision on the matter in dispute. In such instances, the Administrator may request the Board to submit findings and recommendations.

§ 5-60.102 Organization and location of the Board.

(a) The Board is located in Washington, D.C., and is a part of the staff of the Administrator.

(b) The Board consists of a Chairman and four to six other members, in addition to clerical personnel. At least three members of the Board must be trained in the law. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board. Each panel shall have one member who is a graduate of an accredited law school or has equivalent legal training and experience. The Chairman is the administrative head of the Board but otherwise serves on an equal status with other members.

§ 5-60.103 Receipt and disposition of appeals.

(a) When a notice of appeal in any form is received in GSA, it shall be endorsed or stamped to show the date of receipt and immediately be forwarded to the Administrator. The Administrator will forward to the Board appeals submitted under the terms of the contract and such other appeals as he determines should be submitted to the Board for decision or recommendation. The Board shall assign a docket number to the appeal, acknowledge its receipt to the appellant, and forward copies of the appeal and acknowledgment to the contracting officer, and the Central Office service or staff office concerned, and the appropriate Assistant General Counsel or Regional Counsel, and such other persons as appropriate. A copy of the "Rules of the General Services Administration Board of Contract Appeals" shall be included with the acknowledgment to the appellant.

(b) When a statement of the matters in dispute is not included with the notice, the Board shall ask the appellant to specify the portion of the decision or finding of fact from which the appeal is taken. A copy of the reply shall be furnished to the contracting officer.

(c) Within 20 days after request by the Board, the contracting officer shall compile and transmit to the appropriate Central Office service or staff office and the appropriate legal counsel, either the original or copies of all documents pertaining to the appeal, including, but not limited to, the following:

(1) The findings of fact and the decision from which the appeal is taken;

(2) The invitation for bids, the contract, pertinent plans, specifications, amendments, and change orders;

(3) Correspondence between the parties and other data material to the appeal;

(4) Transcripts of any testimony taken during the course of the proceedings of the matter prior to the filing of the notice of appeal to the Administrator; and

(5) Such additional information as the contracting officer or other officials may consider material.

(d) Within 30 days from the receipt of the contracting officer's data, prescribed in (c), above, the responsible

service or staff office shall transmit the appeal file to the Board, together with a brief statement of the position of the Government.

§ 5-60.104 Board of Contract Appeals procedure.**§ 5-60.104-1 Rules.**

Appeals referred to the Board are handled in accordance with the rules of the Board (see Subpart 5-60.2). These rules outline the manner in which appeals are received, hearings conducted, and decisions rendered.

§ 5-60.104-2 Appearance of witnesses for GSA.

GSA witnesses, as determined by the appropriate service or staff office in consultation with the Office of General Counsel, shall appear before the Board and give testimony.

§ 5-60.104-3 Distribution of decisions.

A copy of the decision of the Board shall be furnished to each party, to all affected Central Office services and staff offices, all regional offices, and shall be available for public inspection unless prohibited by GSA regulations governing the availability of records.

§ 5-60.105 Annual report.

The Board shall submit to the Administrator, during the month of July of each year, a report containing an account of its transactions and proceedings for the preceding fiscal year.

Subpart 5-60.2—Rules of the General Services Administration Board of Contract Appeals**§ 5-60.201 Notice of appeal.**

A notice of appeal must be in writing, should be addressed to the Administrator of General Services, and mailed or otherwise furnished to the contracting officer. However, where the appeal is addressed to the contracting officer from whose decision the appeal is taken, or the head of the constituent General Services Administration organization, upon referral, the Board will proceed as though the appeal had been made to the Administrator. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract, or as allowed in applicable provisions of directives or law.

§ 5-60.202 Contents of notices of appeal.

(a) A notice of appeal should indicate that an appeal is intended and should include the following information:

(1) Identification of contract involved (by number);

(2) The General Services Administration organization involved in the dispute, e.g., Public Buildings Service, Federal Supply Service, etc.;

(3) The decision or finding of fact from which the appeal is taken;

(4) The date of the decision;

(5) The contractual provisions concerned in the dispute; and

(6) The nature of the dispute, and the relief sought by the appellant.

(b) The notice of appeal shall be signed by the appellant personally, if an

individual, or if not, by an authorized officer of the appellant organization, or by the appellant's duly authorized representative. A brief in support of the complaint and argument may be submitted with the notice of appeal, or, if the appellant prefers, may be filed with the Board within 15 days after the mailing or filing of the notice.

§ 5-60.203 Preparation of the appeal file.

(a) When the Board has received the notice of appeal, it will promptly acknowledge its receipt to the appellant and furnish copies of the appeal and acknowledgment to the contracting officer and the Central Office service or staff office concerned. Within 20 days after request by the Board, the Contracting Officer, or other constituent element of the General Services Administration, shall compile and transmit to the Board either the original or copies of all documents pertinent to the appeal. This will constitute the appeal file and should include, but not be limited to, the following:

(1) The findings of fact and the decision from which the appeal is taken;

(2) The invitation for bids, the contract, pertinent plans, specifications, amendments, and change orders;

(3) Correspondence between the parties and other data material to the appeal;

(4) Transcripts of any testimony taken during the course of the proceedings of the matter prior to the filing of the appeal;

(5) Such additional information as the contracting officer, or other official may consider material; and

(6) A brief statement of the position of the Government.

(b) The appeal file will be available for inspection by representatives of both interested parties, in the offices of the Board.

§ 5-60.204 Scope of appeals.

When an appeal is within the jurisdiction of the Board, it will in its discretion hear, consider, and make decisions on all questions necessary for the complete adjudication of the issues. Appeals not falling within the scope of the Board's jurisdiction will be referred to the responsible constituent organizational element within the General Services Administration for appropriate action and notice thereof will be furnished to the appellant.

§ 5-60.205 Untimely appeals.

In cases where it is claimed by the Government that an appeal was not filed within the time specified, the Board's initial consideration will be limited solely to the timeliness of the appeal. The Board will not consider the merits or other factors of the appeal if the submission was untimely. If the Board determines that an appeal is untimely, it shall so notify the appellant and the appropriate officials of the General Services Administration.

§ 5-60.206 Conferences.

(a) The Board may, upon the request of either party, or in its own discretion,

arrange a conference of representatives of the appellant and the Government. This informal conference is designed to secure a just and less expensive determination of appeals without unnecessary delay. The conference will be held at a specified time and place to consider the following:

- (1) Simplification of the issues;
 - (2) Possibility of obtaining stipulations, admissions of fact, and introduction of documents;
 - (3) If a hearing is to be held, limitation of the number of expert witnesses; and
 - (4) Such other matters as may aid in the disposition of the appeal.
- (b) The results of the conference shall be reduced to writing by a designee of the Board and made a part of the official file.

§ 5-60.207 Hearings.

The Board shall, at the request of either party, grant a hearing. In the absence of a request, the Board may, in its discretion, order and hold a hearing on any appeal. The parties involved will be given a minimum of 15 days' notice in writing of the time and place of the hearing. Unless there is substantial justification for holding the hearing elsewhere, it will be held in the General Services Building, Washington, D.C. The hearing will be presided over by a designated member of the panel which renders the decision.

§ 5-60.208 Submission without a hearing.

If neither party to the dispute requests a hearing, and the Board does not require one, the decision will be made upon the available records and such additional evidence and argument as may be furnished by the parties involved. If such additional evidence or argument is furnished by one of the parties involved, the Board will make this information available to the other party. The other party may then present argument in rebuttal within a time limitation fixed by the Board.

§ 5-60.209 Absence of parties.

The unexcused absence of a party or his authorized representative at the time and place set for the hearing will not be the occasion for delay of the hearing. In such event, the hearing will proceed and the case will be regarded as submitted on the record by the absent party.

§ 5-60.210 Nature of hearings.

Hearings before the Board will be as informal as may be reasonably permitted under the circumstances. Hearings are held primarily for the purpose of listening to the presentation of both parties and serve as a basis for developing the Board's decision or recommendation. The parties involved may offer such relevant evidence or argument as they deem appropriate subject, however, to the exercise of reasonable discretion by the presiding member of the Board in supervising the extent and manner of presentation of such evidence. The weight to be attached to evidence presented in any

particular form will be determined by the Board.

§ 5-60.211 Examination of witnesses.

Witnesses at hearings before the Board will not be required to testify under oath. However, if the circumstances so warrant, the presiding officer may warn the witness that his statements may be subject to the provisions of Title 18, U.S.C. secs. 287, 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof. All witnesses may be examined or cross-examined by the presiding member or other members of the Board, the parties, or their representatives.

§ 5-60.212 Copies of papers.

Copies of papers, books, records, or documents will be accepted as evidence in lieu of submission of the original documents where such submission is not practicable. After a decision has become final, such copies of documents as are not needed for the official file will be returned to the parties entitled to them.

§ 5-60.213 Transcript of proceedings.

Testimony at hearings shall be reported verbatim unless the Board otherwise orders. Transcripts of the proceedings will be supplied to the appellant and to other interested parties, other than employees of the United States, upon payment of the cost of recording by the public reporter. The transcript will be made available to elements within the General Services Administration and to other interested Government agencies upon request to the Board.

§ 5-60.214 Representation.

An appellant may appear before the Board in person, may be represented by counsel, or by any other duly authorized representative.

§ 5-60.215 Submission of additional information.

If the parties involved desire to submit additional argument or evidence subsequent to a hearing before the Board, they will do so within a period of time set by the presiding officer not in excess of 30 days. When such material is filed by either party involved, the Board will make this material available to the other party. An opportunity for rebuttal shall be given within a time limitation fixed by the presiding officer. In some instances, the Board may require that additional material be presented in order to make a just decision or recommendation.

§ 5-60.216 Decisions.

The decision of the Board will be made in writing and will be accompanied by a report containing the pertinent factors which formed the basis for the decision. The appellant will be notified of the Board's decision by letter. The appellant and the appropriate administrative officials of the General Services Administration will be furnished copies of the decision, including the report. In certain instances, where the circum-

stances warrant, the decisions of the Board will be in summary form. In those instances where the Administrator of General Services reserves the right to make the decision, the appellant will be notified by a letter signed by the Administrator accompanied by a copy of the findings and recommendations made by the Board or otherwise appropriately documented.

§ 5-60.217 Reconsideration of appeals.

A request for reconsideration of an appeal may be filed by either party within 30 days after the date of the decision. Such requests will be considered if based upon (a) newly discovered evidence or (b) a point of law. A motion for either rehearing or reconsideration shall set forth specifically the grounds relied upon to sustain the motion.

§ 5-60.218 Extensions of time.

The Board may grant extensions of time except with respect to the filing of the notice of appeal.

§ 5-60.219 Optional accelerated procedure for cases involving small sums.

An appeal involving relatively small sums of money (not in excess of \$5,000) shall be processed under this rule at the request of or upon the written approval of the appellant subject to the concurrence of the affected constituent element of the General Services Administration. For purposes of this rule, the amount involved in an appeal shall be the difference between the amount of the appellant's claim as stated in this complaint and the amount, if any, determined by the decision from which the appeal is taken.

(a) The appeal will be decided by a single designated member of the Board who shall have, for this purpose, all the authority and power of the full Board to hear, consider, determine, and reconsider the matter.

(b) The appeal shall be deemed submitted for decision on the record unless the appellant, or the Government, within 10 days after the appellant's receipt of the Government's answer to the appeal, requests the Board to schedule an oral hearing.

§ 5-60.220 Payment of claims.

In cases where the Board finds in favor of the appellant, claims shall not be paid by the Office of Financial Management, OFA, General Services Administration, before 30 days after the date of the Board's decision unless, prior thereto, the Director of Financial Management is notified that the Government does not intend to request reconsideration of the appeal. If the Government requests reconsideration, payment shall be withheld pending the Board's final ruling on the matters involved in such request.

Effective date. These regulations are effective upon publication in the FEDERAL REGISTER.

(Sec. 205 (e), 63 Stat. 390; 40 U.S.C. 486 (c))

Dated: June 25, 1962.

LAWSON B. KNOTT, Jr.,
Acting Administrator.

[F.R. Doc. 62-6328; Filed, June 28, 1962;
8:52 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2712]

IDAHO

Withdrawing National Forest Lands for Use of Forest Service; Revoking Reclamation Withdrawal

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, and by virtue of the authority contained in section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

1. Subject to valid existing rights the following-described national forest lands are hereby withdrawn from prospecting, location, entry, and purchase under the United States mining laws, in aid of utilization of the surface of the lands by the Forest Service as administrative sites and recreation areas, as indicated:

[Idaho 010804]

BOISE MERIDIAN

SALMON NATIONAL FOREST

Corn Creek Recreation Area

T. 23 N., R. 14 E.,
Sec. 1, $W\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$,
 $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ (Unsur-
veyed).

RULES AND REGULATIONS

McKay Flat Public Service Site

T. 24 N., R. 19 E.,
Sec. 19, $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$ (Unsurveyed);
Sec. 30, $N\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ (Unsurveyed).

SAWTOOTH NATIONAL FOREST

Bear Gulch Picnic Area

T. 14 S., R. 18 E.,
Sec. 7, $NE\frac{1}{4}NE\frac{1}{4}$.

Kirkman Campground

T. 14 S., R. 18 E.,
Sec. 14, $SE\frac{1}{4}NE\frac{1}{4}NW\frac{1}{4}$.

Magic Mountain Recreation Area

T. 14 S., R. 18 E.,
Sec. 24, $W\frac{1}{2}SE\frac{1}{4}$ and $E\frac{1}{2}SW\frac{1}{4}$;
Sec. 25, $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ and $NE\frac{1}{4}NW\frac{1}{4}$.

Pentstemon Picnic Area

T. 14 S., R. 18 E.,
Sec. 24, $E\frac{1}{2}NE\frac{1}{4}$ and $NE\frac{1}{4}SE\frac{1}{4}$.

Petit Campground

T. 14 S., R. 18 E.,
Sec. 25, $SE\frac{1}{4}NE\frac{1}{4}$.

Balsam Recreation Area

T. 14 S., R. 18 E.,
Sec. 36, $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ and $S\frac{1}{2}S\frac{1}{2}NE\frac{1}{4}$.

Rock Creek Administrative Site

T. 14 S., R. 18 E.,
Sec. 24, $SE\frac{1}{4}SE\frac{1}{4}$;
Sec. 25, $NE\frac{1}{4}NE\frac{1}{4}$ and $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$.
T. 14 S., R. 19 E.,
Sec. 19, lot 4, $SE\frac{1}{4}SW\frac{1}{4}$;
Sec. 30, lot 1.

Birch Glen Picnic Area

T. 13 S., R. 19 E.,
Sec. 6, $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$.

Schipper Picnic Area

T. 13 S., R. 19 E.,
Sec. 6, $E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$.

330 Spring Picnic Area

T. 13 S., R. 19 E.,
Sec. 7, $E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$.

Big Bluff Picnic Area

T. 13 S., R. 19 E.,
Sec. 8, $W\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$.

Harrington Fork Picnic Area

T. 13 S., R. 19 E.,
Sec. 17, $NE\frac{1}{4}NW\frac{1}{4}$ and $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$.

Juniper Spring Picnic Area

T. 13 S., R. 19 E.,
Sec. 18, $SE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$.

Porcupine Spring Campground and Picnic Area

T. 14 S., R. 19 E.,
Sec. 31, $SE\frac{1}{4}NE\frac{1}{4}$;
Sec. 32, $SW\frac{1}{4}NW\frac{1}{4}$.

The areas described aggregate 977.40 acres.

2. The Departmental order of December 22, 1903, withdrawing lands for reclamation purposes in connection with Boise Valley Project, is hereby revoked so far as it affects the following-described lands:

[Idaho 013075]

BOISE MERIDIAN

T. 1 N., R. 1 W.,
Sec. 7, $NE\frac{1}{4}SE\frac{1}{4}$;
Sec. 8, $NW\frac{1}{4}SW\frac{1}{4}$.

Aggregating 80 acres, which are included in an allowed entry.

JOHN A. CARVER, Jr.,
Assistant Secretary
of the Interior.

JUNE 23, 1962.

[F.R. Doc. 62-6313; Filed, June 28, 1962;
8:49 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

GRAND TETON NATIONAL PARK, WYOMING

Boats

Notice is hereby given that pursuant to the authority contained in section 3 of the act of August 25, 1916 (39 Stat. 535: 16 U.S.C. 3), Departmental Order 2640 (16 F.R. 5846), National Park Service Order No. 14 (19 F.R. 8824), Regional Director, Region Two Order No. 3 (21 F.R. 1494), as amended, it is proposed to amend 36 CFR 7.22 as set forth below. The purpose of this amendment is to establish reasonable regulations which will provide adequate control over boats and insure a maximum of safety in their use.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Grand Teton National Park, Moose, Wyoming, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

ROBERT B. MOORE,
*Acting Superintendent,
Grand Teton National Park.*

Paragraph (g) of § 7.22 is amended to read as follows:

§ 7.22 Grand Teton National Park.

(g) *Boats.* (1) No privately owned waterborne craft, including but not limited to boats, canoes, rafts or other floating objects, shall be placed or operated upon the waters of Grand Teton National Park without a permit from the superintendent, who shall have authority to revoke the permit and require the immediate removal of such waterborne craft upon the failure of the permittee to comply with the terms and conditions of the permit. This permit must be carried within the craft at all times and shall be exhibited upon request to any person authorized to enforce the regulations in this chapter.

(2) Numbering of boats: No waterborne craft propelled by machinery of more than ten (10) horsepower shall be operated upon the waters of the park, unless such craft has been documented by the Bureau of Customs or, if undocumented, has been numbered by the United States Coast Guard or by a state having a numbering system approved by the United States Coast Guard.

(3) Rules of the road: The following rules of the road shall apply:

(i) No person shall operate a waterborne craft of any type or description

upon any body of water in the park in a reckless or negligent manner, so as to endanger or be likely to endanger the life, limb or property of any person.

(ii) In narrow channels, boats or other craft shall be operated to the right of the middle of the channel.

(iii) When boats or craft are approaching each other head on, or nearly so, each shall be operated to pass the other on the port (left) side at a distance and at a speed so that the wake of each will not endanger the other.

(iv) When a boat or craft desires to pass another traveling in the same direction, the overtaking boat or craft shall keep clear of the overtaken boat or craft and shall pass at a speed and at a distance so as not to endanger the overtaken boat or craft. The overtaken boat or craft shall maintain its course and speed until the overtaking boat or craft has safely passed.

(v) When two boats are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one vessel is overtaking another, the boat which has the other on her own port (left) shall hold her course and speed; and the boat which has the other on her own starboard (right) side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other boat, or stop and reverse, if necessary.

(vi) A crossing situation shall exist when two boats or craft are approaching so that each has the other forward of its beam.

(vii) An overtaking situation shall exist whenever a boat or craft approaches another from abaft the beam of the other boat or craft.

(viii) Any boat or craft propelled by machinery shall keep clear of any boat or craft under sail or being propelled by oars or paddles.

(ix) Slow speed shall be maintained in docking and fishing areas so as not to endanger persons or other craft.

(4) Safety requirements and equipment: (i) All boats or craft shall carry a life preserver, buoyant vest, buoyant cushion, or ring buoy approved by the United States Coast Guard and in good and serviceable condition for each person on board. Such devices shall be properly secured and stowed so as to be readily accessible in an emergency, except that, any person, twelve (12) years or younger and any nonswimmer, aboard a boat or craft while such boat or craft is in motion, and every person on the Snake River in a craft less than 20 feet in length shall have an approved buoyant device securely fastened to his or her person.

(ii) Every motorboat or other motor-propelled craft, operated between sunset and sunrise shall carry and exhibit the following lights, and during such time, no other lights which may be mistaken for those prescribed, shall be exhibited:

(a) Class A (less than 16 feet in length): A bright white light aft to show all around the horizon and visible for two (2) miles and a combined lantern in the forepart of the boat and lower than the white light, showing green to starboard (right) and red to port (left), each visible one (1) mile and so fixed as to throw the light from right ahead to two (2) points abaft the beam on their respective sides.

(b) Class 1 (16 feet to less than 26 feet in length): Same as required for Class A boats.

(c) Class 2 (26 feet to less than 40 feet in length): A bright white light aft showing all around the horizon and visible two (2) miles). A bright white light in the fore part of the boat as near the stem as possible and lower than the white light aft and so fixed as to throw the light ten (10) points on each side of the boat, from right ahead to two (2) points abaft the beam on either side, and visible two (2) miles. On the starboard (right) side, a green light and on the port (left) side a red light each visible (1) mile and so fixed as to throw the light from right ahead to two (2) points abaft the beam on their respective sides.

(iii) Every motorboat of Class 1 or 2 shall be equipped with an efficient whistle or other sound producing mechanical device.

(iv) Every motorboat of Class 2 shall be provided with an efficient bell.

(v) Every motorboat shall have the carburetor or carburetors of every engine, except outboard motors, using gasoline as fuel, equipped with an efficient flame arrestor of a type approved by the United States Coast Guard.

(vi) Every motorboat, except open boats, using as fuel a liquid of a volatile nature, shall be provided with a natural or a mechanical ventilating system capable of effectively ventilating the bilges of the engine and fuel tank compartments, so as to remove any explosive or inflammable gases.

(vii) Every motorboat shall be provided with at least the minimum number of hand portable fire extinguishers of the size and type approved by the United States Coast Guard, and which shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Inboard motorboats and those outboard motorboats having fuel containers in compartments wherein vapors could be pocketed shall carry the following fire extinguishers:

(a) Class A: At least one (1) approved B-1 type extinguisher.

(b) Class 1: Same as Class A.

(c) Class 2: At least two (2) approved B-1 type extinguishers, or a fixed fire extinguishing system in machinery spaces.

(5) Accidents: (i) In case of collision, accident, or other casualty involving a motorboat or other craft, the operator shall, if, and so far as he can without serious danger to his own boat or craft,

or persons aboard, render such assistance as may be practicable and necessary to other persons affected by the collision, accident, or casualty, in order to save them from danger caused by the collision, accident or casualty. He shall also give his name, address, and identification of his boat or craft to any person injured and to the owner of any property damaged.

(ii) A report of any collision, accident, fire or other casualty that results in property damage in excess of \$50 or any personal injury or death to any person or persons must be made at the nearest Ranger Station within 24 hours.

(6) Prohibited operation: (i) No person shall operate, or knowingly permit any person to operate, any motorboat or craft in a reckless or negligent manner so as to endanger or be likely to endanger, the life, limb or property of any person.

(ii) No person shall operate or knowingly permit any person to operate any motorboat or craft while under the influence of intoxicants, narcotic drugs, barbituates or marijuana.

(iii) Boats propelled by a propeller above the water line of the boat or craft (airboats) are prohibited on all waters within the park.

(iv) No boat or craft shall be used to carry passengers for hire or be used in any commercial operation, unless authorization for such service has been granted by the Secretary.

(v) Motor-propelled waterborne craft are prohibited on all park waters, except Jackson and Phelps Lakes. On Jenny Lake, an authorized boating concessioner may operate motor-propelled boats under conditions specified by the Superintendent.

(vi) Hand-propelled waterborne craft may be used on Jackson, Jenny, Phelps, Emma Matilda, Two Ocean, Taggart, Bradley, Bearpaw, Leigh and String Lakes, and on the Snake River, except within 1,000 feet of the downstream face of Jackson Lake Dam. Hand-propelled craft may also be used on the stream flowing from the outlet of Bearpaw Lake to Jackson Lake. All other lakes, streams, and ponds in the park are closed to boating.

(vii) Sailboats may be used only on Jackson Lake.

(viii) No motor propelled waterborne craft shall be placed or operated upon Jackson Lake from November 1 through April 30.

(ix) No boat more than 32 feet in length shall be placed or operated on park waters, except that this prohibition shall not extend to concessioner-operated sightseeing launches.

(x) No waterborne craft shall be operated within any area delineated by a line of red buoys.

(xi) No waterborne craft shall be operated in excess of five (5) miles per hour within any area delineated by a line of yellow buoys.

(xii) No motor-propelled craft shall be operated within 500 feet of any designated swimming area. Swimming areas are designated by white buoys and float lines.

(xiii) The superintendent may authorize motor propelled craft engaged in

the official business of the Federal Government to operate in closed or restricted water areas.

(xiv) The towing of water skis, surfboards, and similar devices by motorboats or other craft is prohibited on all park waters unless specifically authorized by the superintendent by the posting of signs setting forth the body of water and delineated portion thereof where such activity is permitted.

(xv) Swimming from unanchored boats is prohibited.

(xvi) No person, other than the authorized concessioner or his representatives, shall moor or beach a waterborne craft on the shore of a designated harbor area except in an emergency.

[F.R. Doc. 62-6316; Filed, June 28, 1962; 8:50 a.m.]

[36 CFR Part 7]

MAMMOTH CAVE NATIONAL PARK, KENTUCKY

Establishing Use of Radar

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), Departmental Order 2640 (16 F.R. 5846), National Park Service Order No. 14 (19 F.R. 8824), Regional Director, Region One, Order No. 3 (21 F.R. 1493), as amended, it is proposed to amend § 7.36 of Title 36, Code of Federal Regulations, as is set forth below. The purpose of this amendment is to permit the use of radiomicrowaves (radar) or other electrical timing devices in checking the speed of motor vehicles at Mammoth Cave National Park.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Mammoth Cave National Park, Kentucky, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

A new subparagraph (3) is added to paragraph (b) of § 7.36 to read as follows:

§ 7.36 Mammoth Cave National Park.

* * * * *

(b) *Speed.* * * *

(3) The speed of any motor vehicle may be checked on any park road in the Mammoth Cave National Park, in the State of Kentucky, by the use of radiomicrowaves or other electrical device when such park road, on which the device is used, is clearly marked "Speed Checked by Radar" or "Speed Radar Controlled". The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue.

PERRY E. BROWN,
Superintendent,
Mammoth Cave National Park.

[F.R. Doc. 62-6317; Filed, June 28, 1962; 8:50 a.m.]

[36 CFR Part 7]

BIG BEND NATIONAL PARK, TEXAS

Fishing

Notice is hereby given that pursuant to the authority contained in section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), Departmental Order 2640 (16 F.R. 5846), National Park Service Order No. 14 (19 F.R. 8824), Regional Director, Region Three Order 3 (21 F.R. 1494), as amended, it is proposed to amend 36 CFR 7.41 as set forth below. The purpose of this amendment is to establish a suitable program for management of the waters of the park in the interest of fish conservation.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Big Bend National Park, Texas, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

STANLEY C. JOSEPH,
Superintendent,
Big Bend National Park, Texas.

Paragraphs (a), (b), and (c) of § 7.41 are amended to read as follows:

§ 7.41 Big Bend National Park.

(a) *Fishing; closed waters.* Special ponds and springs reserved for species of rare fish are closed to fishing and bait collecting. The taking or release of any form of fish life in these ponds or springs is prohibited except by special authorization by the Superintendent. These ponds and springs will be posted as closed to fishing and bait collecting and molestation.

(b) *Fishing; method.* (1) Fishing with pole and line, rod and reel, and trot and throw line is permitted all year from the United States side of the Rio Grande.

(2) Use of seine: The use of seines and nets is prohibited except minnow seines no greater than 20 feet in length may be used for taking of minnows for bait.

(c) *Fishing; limit of catch.* The limit of catch per person per day or in possession shall be 25 fish, except that minnows caught for bait shall not be accountable for the purpose of this section.

[F.R. Doc. 62-6315; Filed, June 28, 1962; 8:49 a.m.]

[36 CFR Part 7]

NATCHEZ TRACE PARKWAY

Use of Radar

Notice is hereby given that pursuant to the authority contained in section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), Departmental Order 2640 (16 F.R. 5846), National Park Service Order No. 14 (19 F.R. 8824), and Regional Director, Region One, Order No. 3 (21 F.R. 1493), as amended, it is proposed to amend 36 CFR 7.43 as set forth below. The purpose of this amendment is to permit the use of radio-microwaves (ra-

dar) or other electrical timing devices in checking the speed of motor vehicles at Natchez Trace Parkway.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Natchez Trace Parkway, Box 428, Tupelo, Mississippi, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

MALCOLM GARDNER,
Superintendent,
Natchez Trace Parkway.

A new subparagraph (3) is added to paragraph (c) of § 7.43 to read as follows:

§ 7.43 Natchez Trace Parkway.

(c) Except ambulances and Government cars on emergency trips:

(3) The speed of any motor vehicle may be checked on any park road in the Natchez Trace Parkway, in the States of Alabama, Tennessee, and Mississippi, by the use of radiomicrowaves or other electrical devices when such park road, on which the device is used, is clearly marked "Speed Checked by Radar" or "Speed Radar Enforced" at or near intersections with primary State or Federal highways between which the device is used. The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue.

[F.R. Doc. 62-6318; Filed, June 28, 1962; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AO 192 A4]

[7 CFR Part 984]

WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Amended Marketing Agreement and Order

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) notice is hereby given of the filing with the Hearing Clerk, United States Department of Agriculture, of this recommended decision with respect to proposed amendment of the amended marketing agreement and order (7 CFR Part 984), hereinafter referred to collectively as the "order", regulating the handling of walnuts grown in California, Oregon, and Washington. The order is effective pursuant to provisions of the Agricultural Marketing Agreement Act of 1937, as

amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.), hereinafter referred to as the "act," and any amendments which may be adopted as a result of this proceeding will also be effective pursuant to said act. Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D.C., not later than fifteen days after publication of this document in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing on the record of which the presently recommended amendment of the order was formulated was held in San Francisco, California, on April 5, 1962, pursuant to a notice thereof which was published in the FEDERAL REGISTER on March 15, 1962 (27 F.R. 2471). The notice contained amendment proposals which had been submitted to the Secretary of Agriculture, hereinafter referred to as the "Secretary," by the Walnut Control Board which is the administrative body for the Walnut Marketing Agreement and Order.

Material issues. The material issues presented on the record of the hearing involve amendatory proposals relating to:

- (1) Changes in the definitions of area of production, unshelled walnuts, to handle, packer, sound kernel, handler, carry-over, merchantable free walnuts, merchantable restricted walnuts, merchantable allocation percentage, surplus walnuts, and diversion percentage; addition of a definition of grower; simplification of the definitions of Control Board or Walnut Control Board, shelled walnuts, and trade demand; and conforming changes in eight others;
 - (2) Changes in provisions relating to the administrative body with respect to: composition, term of office, nomination, qualification, vacancies, duties, and procedures;
 - (3) A provision authorizing marketing research and development;
 - (4) Changes in the provisions relating to marketing policy;
 - (5) Changes in the provisions relating to quality control;
 - (6) Changes in the withholding requirements;
 - (7) Changes in the provisions relating to postponement of control obligations;
 - (8) Changes in the provisions relating to disposition of controlled walnuts;
 - (9) Changes in the exemption provisions;
 - (10) Changes in the provisions relating to expenses and assessments;
 - (11) Changes in the provisions relating to reports and records;
 - (12) Changes in the provisions relating to rights of the Secretary and agents of the Secretary; and
 - (13) Conforming changes.
- Findings and conclusions.** The findings and conclusions on the aforementioned material issues, all of which are based on the evidence adduced at the hearing and the record thereof are set forth below.
- (1) Area of production should be modified to include a definition of the two

districts now set forth in § 984.47(a). This would have the effect of giving general applicability to the district concept now used for marketing policy purposes in which California is designated as District 1 and Oregon and Washington as District 2. This change is desirable because district designations will be used in connection with several proposals hereinafter discussed.

A new section should be added to define "grower" as any person engaged in a proprietary capacity in the commercial production of walnuts. The definition should also state that the term grower and producer are synonymous so that the term grower as used in the present order and the term producer as used in the act, are the same. Defining the term grower in this way would clarify for program purposes who is eligible to participate in referenda, Board nominations and other program activities in the capacity of a grower. By limiting the term to persons having a proprietary interest in the commercial production of walnuts it eliminates persons performing as employees of walnut growers and persons who are not producer-handlers or delivering to handlers.

"Control Board or Walnut Control Board" should be changed to "Board," defined as meaning the Walnut Control Board, to recognize the term of common usage and make it available for official use under the program.

"Unshelled walnuts" should be changed to "Inshell walnuts" and its meaning should be continued without change. This would adopt the term most commonly used in the industry to describe walnuts in the shell. In order to conform with this change the word unshelled should be changed to inshell wherever it appears throughout the order.

"Merchantable walnuts, (b) shelled" should be modified by adding the word "minimum" immediately preceding the word "grade." This is a conforming change and does not change the meaning of the present definition.

"To handle" should be modified by inserting the words "or a retailer" immediately after the word "manufacturer" in order to clearly establish responsibility in grower-retailer transactions. The act exempts growers in their capacity as growers and retailers in their capacity as retailers from program requirements. However, either the grower or the retailer may bypass the normal handlers and deal directly with each other in which case one becomes a handler. It has been difficult in some instances to determine who was the handler for program purposes. This should be corrected by specifically including the purchase of walnuts by a retailer as an act of handling in all direct grower to retailer transaction. A similar procedure has been followed in the case of manufacturers who purchase walnuts directly from growers and on the basis of this experience should be adopted for retailers.

The reference to inter-handler transfers in the proviso at the end of the definition of "to handle" should be deleted inasmuch as specific requirements relating to inter-handler transfers are covered in present § 984.85 and need not

be treated as an exemption from the definition.

"Packer" should be modified to specify the two classes of packers represented on the Board. "Cooperative packer" should be defined to mean any packer who is a cooperative marketing association of growers regardless of where or under what laws it may be organized and "independent packer" to mean any packer who is not a cooperative packer. These terms are of long usage both in the industry and for program purposes and to introduce no substantive change.

"Sound kernel" should be deleted and replaced with "kernelweight" meaning the total weight of the kernels in a quantity of walnuts without regard to their quality. The term would be used in connection with restricted and surplus obligations and would provide a simpler and more workable means of determination than has been true of the sound kernel concept. At present, both inshell and shelled shipments must meet minimum grade standards and hence differences in their sound kernel content are minimized to a point where the difficulties of its determination override the desirability of continuing the practice.

"Handler carryover" paragraph (b) should be amended to include the estimated quantity of merchantable shelled walnuts in shelled lots needing further preparation before they can be designated merchantable by the handler. Since such walnuts constitute part of the marketable supply when they become merchantable, they should be included in the shelled walnut carryover which is used for marketing policy determinations.

"Trade demand" should be rewritten to consolidate duplicating provisions in paragraphs (a) and (b) thereof which deal with inclusion of Canada and Cuba in the trade demand under certain circumstances and to recognize the recent inclusion of Alaska and Hawaii in the United States, the terms "Continental United States, Alaska and Hawaii" should be deleted and the term "United States" inserted. These changes are not intended to affect the meaning of the definition as it has been used in the past.

"Merchantable free walnuts" and "Merchantable restricted walnuts" should be modified by deleting the word merchantable, the reference to such walnuts being certified by the Control Board as merchantable free or merchantable restricted and the reference to certification should be deleted from "surplus walnuts." These deletions are necessary to shorten the terms and to recognize that the inclusion of walnuts in the various categories is an act of administration, not certification. Moreover, the definitions of restricted and surplus walnuts should be rewritten to specify that they apply only to walnuts withheld in satisfaction of the respective obligations. This definition should make it clear that when these terms are applied to walnuts withheld by a handler such walnuts may be used only for specified purposes.

"Merchantable allocation percentage" should be modified by deleting the word merchantable to shorten the phrase, de-

leting the reference to establishment by the Secretary and the provision for adjustment to the nearest whole number or tenths place. The definition should be reworded for clarity and to conform with other changes herein proposed. The allocation percentage would be used by the Board in computing each handler's restricted obligation and as such need not be fixed by the Secretary but must be carried out as to many places as necessary for each handling transaction to result in compliance with the restricted percentage then in effect.

"Diversion percentage" should be modified for the same reasons as discussed above in connection with "allocation percentage."

"Light amber halves and pieces" should be deleted. Since United States Standards for Shelled Walnuts have been adopted as a basis for shelled walnut grade requirements and light amber halves and pieces are defined in such standards it is no longer necessary to include this definition in the order.

(2) Provisions relating to establishment and membership should be reworded to use the term "independent packer" rather than the words "other than cooperative packer" since the term independent packer is now proposed to be defined. Also the word "eligible" should replace the word "qualified" in the first paragraph to conform with a proposed section entitled "Eligibility" hereinafter discussed.

Provisions relating to term of office should be brought up to date by deleting the obsolete provisions dealing with the term of office of incumbents who were in office prior to June 30, 1955, and the special provision covering the initial sheller member which was added to the Board in 1954. Also, the section should be clarified by rewording it to provide that all members serve for two year terms ending on June 30 of odd numbered years and continue in office beyond that date until their successors have been selected and have qualified. This does not constitute a substantive change in present purposes of the provision but recognizes the practical aspects of not being able to begin terms on July 1 if successors have not qualified.

Provisions relating to nominations should be modified to authorize methods for obtaining candidates for the independent grower nomination in California, provide for issuance of press releases by the Board, list the candidates for the independent grower nomination in California on the ballot, give equal weight to all votes for the grower representative for Oregon and Washington, and to simplify the wording of the section.

At present all votes of growers marketing through independent packers in District 2 are weighted by the total quantity of inshell walnuts handled by such packer group and those marketing through cooperative packers are weighted by the total quantity of inshell walnuts handled by that group. Hence, one group can be excluded from a voice in selecting the nominee from District 2. Since all growers in District 2 have similar interests and there is only one position on

the Board to represent them, each grower, regardless of his marketing affiliation, should vote directly for a nominee and the method of nominating the grower representative for District 2 should be modified so that each grower's vote is given equal weight.

In the case of California growers who market their walnuts through independent packers there is presently no provision for placing candidates on a nomination ballot other than to write them in at the time of voting. It was testified at the hearing that incumbents willing to serve should be placed on the ballot and that a petition method requiring a fixed number of signatures of growers having a specified tonnage in each of two counties be used to obtain the names of additional candidates for inclusion on the ballot. Since the proposed petition method is untried and its effectiveness has not been tested it should not be specifically set forth in the order. However, the Board should develop this or another workable method of obtaining such candidates and establish, with the approval of the Secretary, such procedure for obtaining candidates for the independent grower nomination in California as is appropriate.

The section should also be modified to provide that balloting be announced by press releases issued by the Walnut Control Board rather than the U.S. Department of Agriculture as is now required. Such press releases are matters of primarily local interest and should be issued by the Board which is charged with conducting other phases of the nominations.

Provisions relating to qualification should be modified by dividing it into a section dealing with eligibility and further a section dealing with acceptance of a position on the Board and entitled "Qualify by acceptance." Rearrangement of these provisions into two sections with titles appropriate to the subject matter does not constitute a substantive change in their meaning.

Provisions relating to vacancy should be modified to recognize a situation not now provided for, namely, selection of a new nominee when a member or alternate member of the Board fails to qualify. This does not result in a vacancy but is still cause for the selection of a successor. The Board should be provided sixty days rather than thirty days as at present in which to certify to the Secretary a nominee for a vacancy. The sixty day period is necessary to give the Board sufficient time to carry out procedures for selecting a new nominee under varying situations.

Provisions relating to duties should be modified to incorporate the requirements of §§ 984.47(d) and 984.52(c) that the Secretary be furnished a complete report of the proceedings of any meeting at which control percentages are recommended by the Board. This is intended to broaden the application of this requirement to apply to all meetings at which Board business is conducted. In addition, a new provision should be included for the Board to recommend rules and regulations for the purpose of administering the program. This is desirable to specifically state that this

activity is one of the Board's normal duties.

Provisions relating to procedure should be modified to delete the provision in paragraph (a) thereof that all communications from the Secretary be addressed to the chairman at such address that he may from time to time file with the Secretary as this is unduly restrictive for administrative purposes and should not be included in the order.

The present quorum requirement should be clarified by specifically stating that a quorum must be present to conduct Board business.

It was testified that in conducting votes by mail or telegram the Board follows a policy of obtaining a vote from every member or his alternate prior to taking any action and that full participation is desirable in all such cases. Therefore, the provisions of paragraph (c) should be modified to require that failure of a member or his alternate to vote or one dissenting vote should prevent adoption of any action voted upon in this manner.

(3) A new section should be added to the order which would authorize research and development projects designed to assist, improve or promote marketing distribution and consumption of walnuts as authorized by the act.

In the past individual handlers have engaged in various marketing research and development projects and the Board is now engaged in a research project designed to improve crop estimates under authority of § 984.40(f). Research results in benefits to all handlers and should be organized on a common basis and receive common financial support. As is normal with this provision, there should be included that such projects would be financed through regular assessment funds.

(4) Provisions relating to recommendation for merchantable free, restricted and allocation percentages and recommendation for marketable, surplus, and diversion percentages should be reworded to more clearly set forth the estimates and recommendations now made by the Board in adopting its marketing policy each year and which now appear in two separate sections of the order. The rewording would not result in any change in the methods of calculating percentages and making recommendations except for the provision for establishment of different percentages in District 2 and deletion of the requirement that the Board recommend allocation and diversion percentages.

This section should combine all of the estimates and recommendations that the Board needs to make to arrive at determinations with respect to control percentages. Estimates and recommendations are now set forth in § 984.47 for the inshell phase of the marketing policy, and in § 984.52 for over-all marketing policy.

The two phases of the market are clearly inter-related, and in practice the Board has considered them together in arriving at its marketing policy. It is reasonable, therefore, that they should be grouped in one section and listed in the order in which they are considered as the marketing policy is developed in

a meeting. Each of the estimates and recommendations required is statistically significant and adds support to the final determinations.

In items 4 and 8, the words "imports," "prices," and "other factors" affecting inshell and shelled walnut trade demand should be added. The potential level of imports has a very significant bearing on the demand for U.S. shelled walnuts. It is so important that the industry has sought and received competent assistance from the University of California Agricultural Extension Service economist in developing statistical measurements of it. Statistical formulas have been developed that will make possible estimates of the quantities of shelled walnuts likely to be imported under given price and supply conditions. This information and related price information on probable U.S. and foreign prices has been used by the Board in its marketing policy discussions, and therefore should properly be included in the order. Adequate information and procedures exist to make reasonable estimates of the other requirements.

The present requirement that the Board recommend differences in percentages between the two districts, not less than one-half of the other district, that will give reasonable effect to the degree to which the production between districts varies from its normal relative production, was justified in 1954 largely on testimony that production in the northwest was declining and should not be required to fully share the burden of restricted and surplus disposition. Average production in Oregon for the period 1956-60, the most recent years for which production and utilization data are available was 4,260 tons or about one-half the 8,120 tons average of the 1948-52 base period used in determining the present provision's normal relative production. On the other hand, the production of California during the same period was 68,268 tons compared to 68,820 tons during the base period. Present indications are that California production will not decrease and that the production decline in Oregon could continue. In order to recognize the new relationships and to eliminate any future uncertainty as to the differences in control percentages this section should be modified to provide that the Board will recommend control percentages for District 2 at one-half those recommended for District 1.

Since California dominates the market with over ninety percent of the total production a large crop in District 2 could not possibly create a total surplus condition in the face of a small or normal crop in District 1. Hence, application of the percentage reduction to District 1 as well as District 2 as now provided is unnecessary and should be eliminated.

As discussed in connection with their definition it is proposed that the allocation and diversion percentages be used by the Board primarily for accounting purposes to aid handlers in complying with the free, restricted, marketable and surplus percentages fixed by the Secretary. For this reason, it is not necessary

that they be included among the Board's recommendations and this requirement should be deleted.

A new provision should be added to require that the Board make appropriate recommendations each year as to grade and size regulations. It was established at the hearing that quality may vary from year to year making different grade and size regulations appropriate between districts. It is also possible that marketing conditions will make changes in grade and size regulations desirable from time to time; therefore, the Board should consider grade and size regulations then in effect and recommend any changes that may be appropriate at its marketing policy meetings.

The present provisions relating to establishment of merchantable free, restricted and allocation percentage regulations by the Secretary, establishment of marketable, surplus and diversion percentage regulations by the Secretary, revision of control percentages, adjustment upon revision of control percentages, and application of control percentages after end of marketing year should be consolidated and modified to provide for establishment of control percentages in District 2 at one-half those in District 1, eliminate the requirement (as already discussed) for establishment of the merchantable allocation and diversion percentages, delete the requirement that the Secretary act on a request for revision of control percentages by two or more handlers, delete the mandatory requirement that the Board review and make percentage recommendations prior to February 15, and delete the automatic continuation of control percentages after the end of the market year.

As discussed in connection with §§ 984.48 and 984.52 present methods of establishing different control percentages between districts should be deleted and there should be substituted a provision that the restricted percentage for District 2 shall always be one-half that of District 1.

The requirement that the Secretary act on a control percentage request made by two or more handlers who handled during the immediately preceding marketing year at least 10 percent of the total walnuts handled should be deleted. The Board is intended to represent the industry and it has been the practice of the Secretary to obtain the views of the Board in all cases prior to taking any action on control percentages or other matters affecting the industry. Moreover, this provision has never been utilized and hence serves no purpose in the program.

The requirement that the Board shall review the percentages prior to February 15 should be changed to provide that the Board may review the control percentages prior to February 15. The matter of reviewing the control percentages by that date should depend on the circumstances of the year and should not be a mandatory requirement. Other than this, no substantive changes in § 984.82 and the first sentence of § 984.83 other than those to conform with other proposed changes are intended.

The requirements of present § 984.84 (a) should be deleted. It was testified at the hearing that in lieu of automatically extending control percentages into the following year until such time as new percentages are established, that the Board when recommending establishment of control percentages could specify whether such percentages should continue into the following year and the Secretary would establish the period of such percentages in his regulatory order. This is in recognition of the fact that control percentages are not used in each season.

(5) The present provisions relating to establishment of grade and size regulations for unshelled walnuts, establishment of grade and size regulations for shelled walnuts and minimum sound kernel content requirement for surplus should be consolidated and modified to specify the inshell minimum standard in terms of United States Standards for Walnuts in the Shell, authorize additional grade and size regulation of shelled walnuts, authorize different grade and size regulations between districts, and provide for the use of kernel weight rather than sound kernel weight.

The minimum standard for inshell walnuts is not now determinable except by referring to the Administrative Rules. This provision should be included in the order to incorporate therein the minimum standards effective since adoption of U.S. Standards for all walnuts by the industry in 1959.

Present §§ 984.43(a) and 984.45 covering operation of minimum standards of quality regardless of whether the prices are above parity should be stated in a single sentence thereby avoiding repetition. The provisions of § 984.43(b) authorizing additional grade and size regulations for inshell walnuts should be broadened in order to provide similar authority for additional grade and size regulations of shelled walnuts. Although no specific requirements were discussed or recommended it was testified at the hearing that the industry desires authority for such additional grade and size regulations of shelled walnuts should the need arise.

Provisions should also be included for application of different grade and size regulations in each of the two districts when growing conditions are such as to create significant differences in quality. Under such authority the Board should make appropriate recommendations at the beginning of any season when differences in regulations appear to be necessary. On the basis of such recommendations and other available information the Secretary should establish different grade regulations for the two districts if appropriate.

The requirements of present § 984.56 should be rewritten in consolidated form and with necessary conforming changes to embody the deletion of the sound kernel requirements and permit the Board to adopt, by rules, such requirements as will safeguard the volume regulation and insure that adequate quantities of kernels are withheld.

The present provisions relating to certification of merchantable unshelled

walnuts, inspection and certification of shelled walnuts, inspection and certification of surplus and cancellation of certificates should be consolidated and modified to delete the provision for three types of inshell walnut inspection certificates and add a requirement limiting removal of inspection identification.

Provision for three types of certificates in present § 984.44 should be deleted. This is for the purpose of permitting the certificate to be concerned solely with the walnuts meeting quality requirements without regard to the intended usage by the handler. The present provision has proven to be unduly burdensome and unnecessary to effectuate the grade or volume regulations. When certificates are used in this manner provision for cancellation is no longer needed.

The requirements of §§ 984.44(a), 984.46(a), and 984.57 should be consolidated to bring together in a single paragraph all present requirements relating to inspection and certification of all walnuts handled or withheld and to conform such requirements with other proposed modifications. It should be required that certificates covering all inshell walnuts and all surplus shelled walnuts for export show their quality in terms of the U.S. Standards and thereby consolidate present § 984.443 of Administrative Rules with order provisions. All of these requirements and such other information as the Board may find necessary for proper administration should be included on the certificate in order to insure effective application of the quality requirements of the program.

The requirements of present §§ 984.44 (c) and 984.46 (b) should be combined to set forth in a single paragraph the authorizations for identification of all certified walnuts. It should specifically state that inspection identification shall not be altered or removed except as directed by the Board and that the Board may prescribe other requirements as necessary to insure adequate identification of all such certified walnuts. These should be specifically included in the order to clearly set forth the Board's administrative obligations and to provide the Board with authority to carry them out.

(6) The provisions on withholding merchantable restricted walnuts, withholding surplus walnuts, determination of sound kernel weight, and the last sentence of the provision on adjustment upon revision of control percentages should be consolidated and modified to specify that control obligations of the district of production shall apply to walnuts shipped into the other district, provide for surplus withholding by kernel weight, conform to the inshell walnut provision with respect to meeting control obligations in advance to that on shelled walnuts, and provide for broader application of the provisions for release of walnuts withheld.

The restricted obligation requirements should provide that the Board may specify different requirements for walnuts withheld for shelling. Under this authority the Board could continue to allow withholding credit for unbleached wal-

nuts suitable for bleaching, which are held for shelling, without the unnecessary expense of having them bleached beforehand and could also allow withholding credit for walnuts to be shelled without the need for sizing to meet merchantable requirements. These differences are now provided for in § 984.443 of Administrative Rules, hence, this authority does not constitute a change in present program operations.

The order should specify that control obligations applicable to the district of production apply to any walnuts that may be transferred to the other district for handling. Although not specifically stated, this is the intent of present provisions and is intended to maintain existing practices.

As previously indicated, surplus withholding requirements should be in terms of "kernelweight" rather than "sound kernel weight." A handler could thus receive credit for the entire weight of the kernels in any lot of walnuts withheld. It was testified that allowing withholding credit for the entire weight of the kernels withheld would encourage a better merchantable pack by providing an outlet for damaged walnuts and would eliminate considerable inspection effort to determine the sound kernel content.

The applicability of § 984.54(b) should be extended to inshell as well as shelled walnuts. This method of meeting control obligations in advance has proved administratively satisfactory for shelled walnuts and should also be used for inshell walnuts as a substitute for the certificate cancellation and adjustment procedures now applicable under § 984.80.

The last sentence of §§ 984.83 and 984.86 dealing with release of restricted or surplus walnuts in excess of the handler's obligations should be continued and given broader application in recognition of the fact that, as a practical matter, handlers sometimes find themselves in an over withheld position for reasons other than a reduction in the restricted or surplus percentage. It should be provided that any time a handler has withheld in excess of his obligations he may release the excess in a manner specified by the Board.

(7) Provisions relating to postponement of the control obligations upon the filing of a bond and application of bonding rates after end of year should be combined and modified to fix a single final date, March 31, for deferment of surplus withholding, authorize the Board to determine the bonding rate upon a new basis, require one bonding rate for all restricted walnuts based on U.S. No. 2 medium size walnuts, and delete administrative detail.

Provisions limiting the deferment of the surplus withholding obligation to March 1 on obligations accrued prior to January 31 and until the following August 31 on obligations accrued after January 31 should be replaced with a final deferment date of March 31 on all surplus obligations. On or before March 31 practically all walnuts have been delivered by growers to handlers and most processing and shelling has been completed. Therefore, handlers should have

no difficulty withholding walnuts to meet their surplus obligations on a current basis after that time. Extending the period of deferment to August 31 of the next marketing year as now provided increases the cost of the deferment bond without commensurate benefit to handlers.

Bonding rates should be established by the Board on the basis of information available to it not later than October 15 of any marketing year in which control percentages are likely to be in effect. The Board now has access to selling prices of most handlers and is in a good position to determine prices for use as bonding rates which are representative of prevailing prices. The price per pound for light amber halves and pieces should continue to be used as a bonding rate for surplus walnuts. The price per pound for bulk pack U.S. No. 2 medium size inshell walnuts should be used as the bonding rate for restricted walnuts rather than a figure computed at 95 percent of the opening price for each bulk pack of walnuts announced by certain specified packers. The requirements that prices be established for each pack of inshell walnuts was considered necessary when walnuts were withheld in various pack categories; however, this is no longer required. Use of U.S. No. 2 and medium size rather than a third quality and baby size, which is the minimum standard, should be ample protection in event of a default.

Paragraphs (d) and (e) of present § 984.81 should be simplified to provide a general authorization and method of disposing of sums collected upon default. Rewording these paragraphs for simplification and conforming changes is not intended to constitute a change in the approach to distribution of sums collected on bonds.

In order to consolidate all provisions dealing with bonding rates § 984.84(b) should be included with the other bonding provisions.

(8) Provisions relating to disposition of merchantable restricted walnuts withheld by shelling and reports of receipts of merchantable restricted walnuts for shelling should be combined and continued substantially unchanged except to recognize that persons other than handlers may desire to shell restricted walnuts. In this case, the Board should be provided with necessary flexibility to obtain all needed information concerning such disposition.

Provisions relating to disposition of merchantable restricted walnuts withheld by export, and disposition of surplus walnuts withheld by export, should be consolidated, retaining the general authority and method of exporting controlled walnuts in simplified form and modified to delete the requirement that exports to Canada and Mexico be on the basis of a delivered price, duty paid, and the limitation on pooling surplus after February 15.

Present requirements that the Board execute an agreement to prevent reimportation into the United States and that the handler agent who exports walnuts be entitled to a commission of 5 percent of the export price should be deleted so

that the Board may use prevailing commercial practices. Requirements such as these should be left to the terms and conditions in the export agreement entered into by each agent handler with the Board.

The requirement that exports to Canada and Mexico be on the basis of a delivered price duty paid should be deleted. This has been a safeguard intended to insure that walnuts exported to these neighboring countries are permanently removed from normal markets in the United States. However, experience has shown that good control of export shipments can be maintained by the Board without this requirement which involves burdensome paper work and is not normal to export sales.

The withholding handler should continue to be credited with restricted or surplus disposition for walnuts exported by either himself or another handler acting as agent to the Board and to have exports in excess of his withholding obligation transferred to such other handler as he may designate.

Provisions relating to disposition of surplus walnuts withheld, by other than export and disposition of proceeds from sales of pooled surplus should be modified to simplify the wording and allow the Board to accept for pooling and disposition walnuts in excess of a handler's accumulated surplus obligation after February 15. The present limitation has proven incompatible with handlers' normal operating procedures in that it often requires walnuts withheld in anticipation of a surplus requirement to be retained on the handler's premises long after he has processed them and set them aside for such use. When such walnuts are of low quality and destined for disposition at an oil mill, they constitute a sanitation problem which would not be necessary if they were sent to the oil mill for disposition immediately. In accepting such walnuts for pooling in excess of the handler's accrued surplus obligation, the Board should protect itself against liability for any losses sustained by a handler by virtue of disposing of walnuts in excess of his surplus obligation.

A provision should be added for handlers to transfer excess surplus pool credits in the manner presently provided for export credits. It is anticipated that surplus control may be more important in the future and in a recent surplus year it became apparent that transfers of surplus pool credits as well as export credits are desirable.

(9) Provisions relating to exemptions, and the exemption requirements of Administrative Rules should be combined. These provisions should remain substantially unchanged except for additional authorization to modify exemption requirements to accommodate situations that may occur in the future wherein it would be in the best interests of the program to make such changes and permit the disposition of walnuts into the low-order outlets, animal feed and oil, under any governmental program. The latter is necessary to permit producers and handlers to participate in programs to remove supplies from the market without conflict with this part.

(10) Provisions relating to expenses should be modified by addition of a requirement that the Board file a proposed budget of expenses and rates of assessment for inshell and shelled walnuts with the Secretary as soon as practicable after the beginning of each marketing year. This requirement recognizes normal practice of the Board which is to prepare a budget together with recommended rates of assessments for submission to the Secretary and is necessary so the Secretary may approve the budget and set the rates of assessment.

Provisions relating to assessments should be modified to clarify the refund computation method, delete the authority for the Board to enter into a suit to enforce payment, and to require payment of assessments on inshell walnuts at the time of handling or when declared for handling as is now done for shelled walnuts. The Board has found that the use of periodic reports of walnuts handled as a basis for administration rather than inspection certificates is now more appropriate in view of changes in handling practices resulting in inspection being done on an in-line or stock basis rather than at the time of actual shipment as was true several years ago. Therefore, it is desirable to base inshell walnut assessments on handling or declaration for handling rather than certification.

Authority for the Board to enter into a suit to enforce payment of assessments by handlers should be deleted. The facilities of the U.S. Department of Agriculture and Justice are available to the Board for such actions and should be used in all cases.

(11) Reports of handler carryovers and reports of merchantable restricted and surplus walnuts held should be consolidated and modified to eliminate the detailed reporting requirements. Reporting requirements in this subpart should be general terms rather than requiring a detailed breakdown of the information to be included. These provisions are administered on the basis of forms prepared by the Board and distributed to handlers for use in making reports and the present requirements have proven unnecessarily rigid, making it difficult to specify the form in which the needed information is to be submitted. Therefore, the Board should be authorized to specify the manner of reporting such information. Also, the Board should continue, with the approval of the Secretary, to be authorized to obtain such information as may be necessary to enable it properly to perform its functions under the regulatory program.

Reports of merchantable unshelled walnuts shipped from stock and reports of merchantable shelled walnuts handled should be consolidated and modified by eliminating the detailed reporting requirements. As previously discussed most walnuts are now shipped under what might be described as stock certificates and the report of walnuts shipped from stock has assumed general importance. The need for reports on both inshell and shelled walnuts handled is similar and both these reports can be handled together, making it desirable to consolidate the requirements. The more general authority for obtaining reports

on shelled walnuts has proven adequate and there is no need to continue the detailed breakdown of information required on unshelled walnuts. Hence, the details of the report should be left to the Board rather than specified in the order.

Reports of disposition of merchantable restricted walnuts withheld should be expanded to cover surplus as well as restricted walnuts since similar information is needed on both categories of controlled walnuts. The detailed reporting requirements should be deleted in favor of a general requirement authorizing the Board to specify the detailed information needed. In this way the Board will not be limited in its preparation of forms suitable to all requirements as they occur.

Reports of interstate handling within the area of production should be modified to eliminate the details, make conforming changes, and require the report only from the receiving handler. It was testified that the primary purpose of this report is to insure that the control obligations applicable to the district in which the walnuts are grown apply to such walnuts if they are transferred to another district. Such controls are applied on the receiving handler, accustomed to filing reports with the Board, and hence obtaining a single report is adequate.

Certification of reports should be modified by changing the word "subpart" to "part." Under the proposals herein recommended, reports may be made that are authorized by this subpart but not specifically required by this subpart. All such reports should be certified.

A new section "Confidential Information" should be added to the order. It should specify that all reports and records submitted by handlers to the Board containing information that constitutes a trade secret or discloses a trade position or financial condition or other aspects to the business operations of a handler shall be kept in custody of employees of the Board and shall be disclosed to no one except the Secretary. The act requires such safeguarding of confidential information and this is the normal practice of the Board. However, it is advisable to specifically include such requirement in the order in that it serves to advise all persons connected with the program that confidential information will be accorded due respect by those having access to it.

(12) Rights of the Secretary should be modified by deleting the proviso at the end of the third sentence which states "except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary" so that the sentence will permit any such acts to be considered on their merits. The last sentence in the section which deals with designation of another agency in the event the Walnut Control Board does not perform its duties or exercise its powers should also be deleted. Since the Secretary has the right to remove individual employees or Board representatives there may be no need for appointing another administrative agency and a more preferable method of operation could be to remove and replace the individual persons.

Agents should be modified by deleting the reference to "bureau or division" of the United States Department of Agriculture and inserting the words "any subdivision" in lieu thereof. Since subdivision designations of the Department are changed from time to time this is intended to give this section continuing applicability regardless of the changes in the organizational structure of the Department.

(13) The proposals for amendment heretofore recommended will make it necessary to make certain conforming changes in sections not specifically discussed in connection with the proposals. All such changes should be incorporated in the proposed order as necessary.

The rulings on proposed findings and conclusions. At the conclusion of the hearing the presiding officer set April 20, 1962, as the time by which briefs from interested persons with respect to testimony presented in evidence at the hearing and the conclusions to be drawn therefrom could be filed with the Hearing Clerk of the Department. A brief was submitted by the California Farm Bureau Federation. The brief discussed the proposals made at the hearing with regard to establishment of a method for obtaining candidates for the California independent grower position on the Board. The brief suggested that the method of obtaining such candidates proposed at the hearing or a similar petition procedure be included in the order and that the order further provide flexibility for the Board at its discretion to obtain candidates for the nomination by other methods. The specific method proposed is not included herein. However, authority for the Board to establish appropriate methods of obtaining such candidates is proposed. Every point covered in this brief has been carefully considered, consistent with the evidence in the record, in making the findings and reaching the conclusions set forth herein. To the extent that the proposals in the brief are inconsistent with the findings and conclusions contained herein, they are denied on the basis of the facts found and stated in connection with this recommended decision.

General findings. (a) The order is hereby proposed to be amended and all the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The order as hereby proposed to be amended regulates the handling of walnuts in California, Oregon, and Washington in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activities specified in proposals on which the amendment hearing has been held;

(c) The order as hereby proposed to be amended prescribes so far as practicable such different terms applicable to different parts of the production area as are necessary to give due recognition to differences in the production and marketing of walnuts covered thereby;

(d) The order as hereby proposed to be amended is limited in its application to the smallest regional production area which is practicable, consistently with

carrying out the declared policy of the act and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(e) All handling of walnuts as defined in the order as hereby proposed to be amended is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

Recommended order. The following amended marketing agreement and order are recommended as the detailed means by which the foregoing conclusions may be carried out.¹

Amended Order Regulating Handling of Walnuts Grown in California, Oregon, and Washington

DEFINITIONS

Secs.	
984.1	Secretary.
984.2	Act.
984.3	Person.
984.4	Area of production.
984.5	Grower.
984.6	Board.
984.7	Marketing year.
984.8	Walnuts.
984.9	Inshell walnuts.
984.10	Shelled walnuts.
984.11	Merchantable walnuts.
984.12	Substandard walnuts.
984.13	To handle.
984.14	Handler.
984.15	To pack.
984.16	Packer.
984.17	Pack.
984.18	Sheller.
984.19	Manufacturer.
984.20	Kernelweight.
984.21	Handler carryover.
984.22	Trade demand.
984.23	Free walnuts.
984.24	Restricted walnuts.
984.25	Marketable walnuts.
984.26	Surplus walnuts.
984.27	Allocation percentage.
984.28	Diversion percentage.
984.29	Control percentages.
984.30	Control obligations.
984.31	Part and subpart.

ADMINISTRATIVE BODY

984.35	Walnut Control Board.
984.36	Term of office.
984.37	Nominations.
984.38	Eligibility.
984.39	Qualify by acceptance.
984.40	Alternates.
984.41	Vacancy.
984.42	Expenses.
984.43	Powers.
984.44	Duties.
984.45	Procedure.

RESEARCH AND DEVELOPMENT

984.46	Research and development.
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MARKETING POLICY

984.48	Marketing estimates and recommendations.
984.49	Control percentages.

QUALITY CONTROL

984.50	Grade and size regulations.
984.51	Inspection and certification of inshell and shelled walnuts.
984.52	Processing of shelled walnuts.

CONTROLLED WALNUTS

984.54	Withholding obligation.
984.55	Interhandler transfers.
984.56	Deferment of withholding.

¹ The provisions identified with an asterisk (*) apply only to the proposed amended marketing agreement.

DISPOSITION OF CONTROLLED WALNUTS

Sec.	
984.60	Shelling restricted walnuts.
984.61	Export.
984.62	Surplus pool.
984.63	Storage facilities.
984.64	Disposition of substandard walnuts.
984.65	Compliance.
984.66	Assistance of Board in meeting control obligations.
984.67	Exemptions.

EXPENSES AND ASSESSMENTS

984.68	Expenses.
984.69	Assessments.

REPORTS, BOOKS AND OTHER RECORDS

984.71	Reports of handler carryover.
984.72	Reports of merchantable handled.
984.73	Reports of disposition of controlled walnuts.
984.74	Reports of interdistrict shipment of walnuts.
984.75	Reports of disposition of substandard walnuts.
984.76	Other reports.
984.77	Verification of reports.
984.78	Certification of reports.
984.79	Confidential information.
984.80	Books and other records.

MISCELLANEOUS PROVISIONS

984.83	Rights of the Secretary.
984.84	Personal liability.
984.85	Separability.
984.86	Derogation.
984.87	Duration of immunities.
984.88	Agents.
984.89	Effective time and termination.
984.90	Effect of termination or amendment.

DEFINITIONS

§ 984.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 984.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.)

§ 984.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 984.4 Area of production.

"Area of production" means the States of California, Oregon, and Washington, of which the State of California shall be District 1, and the States of Oregon and Washington District 2.

§ 984.5 Grower.

"Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity in the commercial production of walnuts.

§ 984.6 Board.

"Board" means the Walnut Control Board established pursuant to § 984.35.

§ 984.7 Marketing year.

"Marketing year" means the twelve months from August 1 to the following July 31, both inclusive.

§ 984.8 Walnuts.

"Walnuts" means only walnuts of the "English" (*Juglans regia*) varieties grown in the States of California, Oregon, and Washington.

§ 984.9 Inshell walnuts.

"Inshell walnuts" means walnuts the kernels of which are contained in the shell.

§ 984.10 Shelled walnuts.

"Shelled walnuts" means walnut kernels after the shells are removed.

§ 984.11 Merchantable walnuts.

(a) *Inshell*. "Merchantable inshell walnuts" means all inshell walnuts meeting the minimum grade and size regulations set forth in § 984.50.

(b) *Shelled*. "Merchantable shelled walnuts" means all shelled walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50.

§ 984.12 Substandard walnuts.

"Substandard walnuts" means all walnuts (whether inshell or shelled) the kernels of which do not meet the minimum standard prescribed for merchantable shelled walnuts.

§ 984.13 To handle.

"To handle" means to sell, consign, transport or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, in the current of commerce either within the area of production, or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower: Except, that the term "to handle" shall not include sales and deliveries within the area of production by growers to handlers, or the authorized disposition of merchantable restricted, surplus, or substandard walnuts.

§ 984.14 Handler.

"Handler" means any person who handles inshell or shelled walnuts.

§ 984.15 To pack.

"To pack" means to bleach, clean, grade, or otherwise prepare walnuts for market as inshell walnuts.

§ 984.16 Packer.

"Packer" means any person who is engaged in the business of packing walnuts or has walnuts packed for his account and handles them as inshell walnuts, categorized as either:

(a) *Cooperative packer*, meaning any packer which is a cooperative marketing association of growers regardless of where or under what laws it may be organized; or

(b) *Independent packer*, meaning any packer who is not a cooperative packer.

§ 984.17 Pack.

"Pack" means a specific commercial classification according to size, internal quality, and external appearance and condition, of merchantable inshell walnuts, packed in accordance with the pack specifications prescribed pursuant to § 984.50.

§ 984.18 Sheller.

"Sheller" means any person who is engaged in the business of shelling walnuts or has walnuts shelled for his account and handles them as shelled walnuts.

§ 984.19 Manufacturer.

"Manufacturer" means any person who uses walnuts in the production of bakery goods, ice cream, candy, or other food products, except walnut oil.

§ 984.20 Kernelweight.

"Kernelweight" means the total weight of the kernels in a quantity of walnuts regardless of their quality.

§ 984.21 Handler carryover.

"Handler carryover," as of any date, means:

(a) *Inshell*. All merchantable inshell walnuts (except those held in satisfaction of control obligations) wherever located, then held by a handler or for his account (whether or not sold), plus the estimated quantity of merchantable inshell walnuts in lots then held by a handler for packing as merchantable inshell walnuts;

(b) *Shelled*. All merchantable shelled walnuts (except those held as surplus) wherever located, then held by a handler or for his account (whether or not sold), plus the estimated quantity of merchantable shelled walnuts to be produced from inshell and shelled walnuts then held by a handler.

§ 984.22 Trade demand.

(a) *Inshell*. The quantity of merchantable inshell walnuts which the trade will acquire from all handlers during a marketing year for distribution in the United States, Puerto Rico, and the Canal Zone.

(b) *Shelled*. The quantity of merchantable shelled walnuts which the trade will acquire from all handlers during a marketing year for distribution in the United States, Puerto Rico, and the Canal Zone.

(c) *Inclusion of Canada and Cuba in trade demand*. Whenever there is reasonable probability that distribution of inshell and shelled walnuts may be made to the trade in either Canada or Cuba at prices reasonably comparable with prices received in the United States, either or both may be included in the trade demand.

§ 984.23 Free walnuts.

"Free walnuts" means those inshell walnuts which are included in the free percentage established by the Secretary pursuant to § 984.49.

§ 984.24 Restricted walnuts.

"Restricted walnuts" means those inshell walnuts which are withheld in satisfaction of a restricted obligation arising from application of a restricted percentage.

§ 984.25 Marketable walnuts.

"Marketable walnuts" means those walnuts, inshell or shelled, which are included in the marketable percentage established by the Secretary pursuant to § 984.49.

§ 984.26 Surplus walnuts.

"Surplus walnuts" means those inshell or shelled walnuts which are withheld in satisfaction of a surplus obligation arising from application of a surplus percentage.

§ 984.27 Allocation percentage.

"Allocation percentage" means the quotient, expressed as a percentage with applied accuracy to the nearest pound, that results from dividing the restricted percentage by the free percentage.

§ 984.28 Diversion percentage.

"Diversion percentage" means the quotient, expressed as a percentage with applied accuracy to the nearest pound, that results from dividing the surplus percentage by the marketable percentage.

§ 984.29 Control percentages.

"Control percentages" means free, restricted, marketable, and surplus percentages established by the Secretary pursuant to § 984.49.

§ 984.30 Control obligations.

"Control obligations" means the quantity of walnuts each handler must withhold to meet the restricted or the surplus percentage established by the Secretary pursuant to § 984.49.

§ 984.31 Part and subpart.

"Part" means the order regulating the handling of walnuts grown in California, Oregon, and Washington, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of walnuts grown in California, Oregon, and Washington shall be a "subpart" of such part.

ADMINISTRATIVE BODY**§ 984.35 Walnut Control Board.**

(a) A Walnut Control Board is hereby established, consisting of ten members, selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. One member and one alternate member shall be selected by the Secretary from nominees submitted by each of the following groups or from among other eligible persons belonging to such groups:

(1) The cooperative packers doing business within the State of California;
 (2) The independent packers doing business within the State of California;
 (3) The group of cooperative packers or independent packers doing business within the State of California, who, during the preceding marketing year, handled more than 50 percent of the merchantable inshell walnuts handled by packers located within the State of California;

(4) Walnut growers whose orchards are located in California and who market their walnuts through cooperative packers;

(5) All other walnut growers whose orchards are located in California;

(6) Walnut growers whose orchards are located in California and whose walnuts were marketed during the preceding marketing year through the packer group specified in subparagraph (3) of this paragraph;

(7) Walnut packers whose plants are located within the States of Oregon or Washington;

(8) Walnut growers whose orchards are located within the States of Oregon or Washington;

(9) Walnut shellers within the area of production who are handlers but who are not packers.

(b) The tenth member shall be selected after the selection of the nine members from the above specified groups and after opportunity for such nine members to nominate the tenth member.

§ 984.36 Term of office.

The term of office of Board members and alternate members shall be for a period of two years ending on June 30 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified.

§ 984.37 Nominations.

(a) Each of the nine groups specified in § 984.35 may nominate one person as member and one person as alternate, and the nine members selected to represent such groups may nominate by majority vote one person as member and one person as alternate for the tenth member position. Nominations for each group of handlers shall be submitted on ballots mailed by the Board to all handlers in such groups. Nominations on behalf of growers who market their walnuts through cooperative handlers shall be submitted on ballots cast by each such handler for its growers: Except, that growers in group 8 shall vote individually. Nominations on behalf of growers in groups 5 (and 6 when group 3 represents independent packers) and 8 shall be submitted after ballot by such growers pursuant to announcements by press releases of the Board to the principal papers in the walnut producing area in California, Oregon, and Washington. Such releases shall provide pertinent voting information, including the names of the candidates and the locations where ballots may be obtained. The ballots shall be accompanied by full instructions as to their marking and mailing and shall include the names of the incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board, with the approval of the Secretary. All packer votes shall be weighted by the quantity (rounded upward to the nearest whole ton) of merchantable inshell walnuts handled by each packer during the preceding marketing year and all grower votes shall be given equal weight. Sheller votes shall be weighted by the quantity of merchantable shelled walnuts handled by each sheller during the preceding marketing year. The packer, sheller, or grower receiving the highest vote for each position shall be the nominee.

(b) Nominations received in the foregoing manner by the Board shall be reported to the Secretary on or before June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein specified

by June 15 of any such year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by August 1 of any such year, the Secretary may select such member without nomination.

§ 984.38 Eligibility.

No person, other than the tenth member and alternate, shall be selected or continue to serve on the Board more than 30 days after he ceases to be a member of or employed by a member of the group he represents.

§ 984.39 Qualify by acceptance.

Each person selected by the Secretary as a member or alternate of the Board shall, prior to serving; qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

§ 984.40 Alternates.

(a) An alternate for a member of the Board shall act in the place and stead of such member in his absence or in the event of his death, removal, resignation, or disqualification, until a successor for his unexpired term has been selected and has qualified.

(b) In the event any member of the Board and his alternate are both unable to attend a meeting of the Board, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member, or in the event such other alternate cannot attend, or there is no such other alternate, such member, or in the event of his disability or a vacancy, his alternate may designate, subject to the disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place of such member. For the purposes of this paragraph, a cooperative handler group and a cooperative grower group in the same state shall be considered the same group.

§ 984.41 Vacancy.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member or alternate, or any need to select a successor through failure of any person selected as a member or alternate member to qualify, shall be recognized by the Board causing a nomination to be made by the appropriate group and certifying to the Secretary a new nominee within 60 calendar days.

§ 984.42 Expenses.

The members of the Board shall serve without compensation, but shall be allowed their necessary expenses.

§ 984.43 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 984.44 Duties.

The duties of the Board shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Board to be audited by one or more competent public accountants at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to walnuts and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and

(h) To recommend rules and regulations for the purpose of administering this subpart.

§ 984.45 Procedure.

(a) The members of the Board shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Board business as they deem advisable. The Board shall give the Secretary the same notice of its meetings as is given to members of the Board.

(b) All decisions of the Board, except where otherwise specifically provided, shall be by majority vote of the members present. A quorum of six members shall be required for the conduct of Board business.

(c) The Board may vote by mail or telegram upon due notice to all members. When any proposition is submitted for voting by one of such methods, one dissenting vote or failure of a member or alternate to vote, shall prevent its adoption until submitted to a meeting of the Board.

RESEARCH AND DEVELOPMENT

§ 984.46 Research and development.

The Board, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote marketing, distribution, and consumption of walnuts, the expense of such projects to be paid from funds collected pursuant to § 984.69.

MARKETING POLICY

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year prior to September 20, the Board shall hold a meet-

ing for the purpose of recommending to the Secretary a marketing policy for such year. Such recommendation shall be adopted by the affirmative vote of at least six members of the Board and shall include the following:

(1) Its estimate of the orchard-run production in each district for the marketing year;

(2) Its estimate of the quantity of merchantable inshell walnuts likely to be produced and be available for inshell use during such year, expressed in pounds, inshell weight, and kernelweight;

(3) Its estimate of merchantable inshell walnut handler carryover as of August 1, expressed in pounds, inshell weight, and kernelweight;

(4) Its estimate of merchantable inshell walnut trade demand for such year, taking into consideration trade carryover at the beginning and end of the year, imports, prices, prospective shelled walnut market conditions, and other factors affecting inshell trade demand during such year, expressed in pounds, inshell weight, and kernelweight;

(5) Its recommendation for inshell walnut handler carryover on July 31 of such year expressed in pounds, inshell weight, and kernelweight;

(6) Its estimate of merchantable shelled walnut production during such marketing year;

(7) Its estimate of merchantable shelled walnut handler carryover as of August 1;

(8) Its estimate of merchantable shelled walnut trade demand, taking into consideration trade carryover, at the beginning and end of the year, imports, prices, and other factors affecting shelled walnut trade demand;

(9) Its recommendation for shelled walnut handler carryover on July 31 of such year;

(10) Its recommendation as to the merchantable free and restricted percentages to be fixed for inshell walnuts produced in each district. In recognition of differences in production and marketing, the Board shall recommend that the restricted percentage in District 2 be one-half of the percentage in District 1;

(11) Its recommendation as to the marketable and surplus percentages to be fixed for walnuts produced in each district. In recognition of differences in production and marketing, the Board shall recommend that the surplus percentage in District 2 be one-half of the percentage in District 1; and

(12) Its recommendation as to grade and size regulations.

§ 984.49 Control percentages.

(a) *Free and restricted percentages.* Whenever the Secretary finds on the basis of the Board's recommendations or other information that limiting the quantity of merchantable inshell walnuts which may be handled during a marketing year would tend to effectuate the declared policy of the Act, he shall establish for District 1 a free percentage to prescribe the portion of such walnuts which may be handled as inshell walnuts and a restricted percentage to prescribe the portion that must be withheld from such

handling and similarly for District 2 except that the restricted percentage shall be one-half that of District 1.

(b) *Marketable and surplus percentages.* Whenever the Secretary finds on the basis of the Board's recommendations or other information that limiting the quantity of merchantable inshell and shelled walnuts which may be handled during a marketing year would tend to effectuate the declared policy of the Act, he shall establish for District 1 a marketable percentage to prescribe the portion of such walnuts which may be handled in normal markets and a surplus percentage to prescribe the portion that must be withheld from handling in such markets and similarly for District 2 except that the surplus percentage shall be one-half that of District 1.

(c) *Revision of percentages.* In the same manner, at any time prior to February 15 of the marketing year, the Board may recommend that the marketable and free percentages be increased and the surplus and restricted percentages decreased. On the basis of the Board's recommendation or other information, the Secretary may establish revised control percentages. Upon revision, all control obligations theretofore accrued on walnuts handled or declared for handling during such year on the basis of previously effective percentages shall be adjusted accordingly.

QUALITY CONTROL

§ 984.50 Grade and size regulations.

(a) *Minimum standards for inshell walnuts.* No handler shall handle inshell walnuts unless such walnuts are equal to or better than the requirements of U.S. No. 3 grade and baby size as defined in the then effective United States Standards for Walnuts (*Juglans regia*) in the Shell. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(b) *Minimum standard for shelled walnuts.* No handler shall handle shelled walnuts unless such walnuts are equal to or better than the requirements of the U.S. Commercial grade as defined in the then effective United States Standards for Shelled Walnuts (*Juglans regia*) and the minimum size shall be pieces not more than 5 percent of which will pass through a round opening $\frac{3}{4}$ inch in diameter. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(c) *Effective period.* The minimum standards established pursuant to paragraphs (a) and (b) of this section and the provisions of this part relating to the administration thereof, shall continue in effect irrespective of whether the season average price for walnuts is above the parity level specified in section 2(1) of the Act.

(d) *Additional grade and size regulations.* The Board may recommend to the Secretary additional grade and size regulations in the form of more restrictive minimum standards than those specified in this section, or pack specifications as to grades and sizes that may be handled. Different regulations may be recommended for each district when

necessary due to significant differences in the quality of walnuts produced in each district. If the Secretary finds, on the basis of such recommendation or other information, that additional grade and size regulations for a district would tend to effectuate the declared policy of the Act, he shall establish such regulations.

(e) *Minimum requirements for surplus.* The Board, with the approval of the Secretary, may specify the minimum kernel content and related requirements for any lot of walnuts acceptable in satisfaction of a surplus obligation: *Provided*, That surplus walnuts exported must meet the requirements of paragraph (a) of this section, if inshell, or paragraph (b) of this section, if shelled.

§ 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling or withholding any walnuts, each handler, at his own expense, shall cause such walnuts to be inspected and certified as meeting the then effective grade and size regulations or the quality requirements for walnuts withheld by the inspection service designated, with approval of the Secretary, by the Board. Each certificate shall show the identity of the handler, the quantity of walnuts, the date of inspection, and for inshell walnuts, the kernelweight, and the grade and size of such walnuts as set forth in the United States Standards for Walnuts in the Shell. Certificates covering surplus shelled walnuts for export shall also show the grade, size, and color of such walnuts as set forth in the United States Standards for Shelled Walnuts. The Board may prescribe such additional information to be shown on the inspection certificates as it deems necessary for the proper administration of this part. Handlers shall cause a copy of each certificate issued by the inspection service to be furnished to the Board.

(b) Upon inspection, all certified walnuts shall be identified by seals, stamps, or other means of identification prescribed by the Board and affixed to the container by the handler under the supervision of the Board or a designated inspector and such identification shall not be altered or removed except as directed by the Board. The Board may, with the approval of the Secretary, prescribe such other requirements as may be necessary to insure adequate identification of such certified walnuts.

(c) Whenever the Board determines that the length of time in storage or conditions of storage of any lot of walnuts which has been previously inspected have been or are such as normally to cause deterioration, such lot of walnuts shall be reinspected at the handler's expense and recertified as merchantable prior to shipment.

§ 984.52 Processing of shelled walnuts.

(a) No handler shall slice, chop, grind, or in any manner change the form of shelled walnuts unless such walnuts have been certified as merchantable or as suitable for processing pursuant to paragraph (b) of this section. The Board shall establish such procedures as are necessary to insure that all such

walnuts are inspected and certified prior to any such processing.

(b) Any lot of shelled walnuts which, upon inspection, fails to meet the minimum standard effective pursuant to § 984.50 solely due to excess shriveling may be certified for processing provided that the total amount of shrivel does not exceed 20 percent, by weight, of the lot. All such walnuts must be reinspected after processing and shall be certified as merchantable if the processed material meets the effective minimum standard. The provisions of this paragraph may be modified by the Secretary, upon recommendation of the Board or other information.

CONTROLLED WALNUTS

§ 984.54 Withholding obligation.

(a) *Restricted obligation.* No handler shall handle inshell walnuts unless prior to or upon shipment thereof (or purchase if applicable), he has withheld a quantity, by weight, of certified merchantable inshell walnuts equal to the allocation percentage of the inshell walnuts handled or declared for handling by him: *Provided*, That such withholding may be temporarily deferred pursuant to the bonding provisions of § 984.57 and that the Board, with the approval of the Secretary, may modify the merchantable requirements for walnuts withheld for shelling.

(b) *Surplus obligation.* No handler shall handle walnuts unless prior to or upon shipment thereof (or purchase if applicable) he has withheld a quantity of walnuts meeting the requirements of § 984.50(e) and having a certified kernelweight equal to the diversion percentage of the kernelweight of all inshell walnuts handled or declared for handling and the actual net weight of all shelled walnuts handled or declared for handling by him: *Provided*, That such withholding may be temporarily deferred pursuant to the bonding provisions of § 984.57.

(c) Walnuts withheld as surplus shall be set aside and thereafter held for the account of the Board at the expense of the handler and, from the date of withholding, shall be available for inspection during reasonable business hours by the Board or its designees. Such walnuts shall be stored in such manner as to maintain them in the same condition as when certified for surplus, except for loss through conditions beyond the handler's control. Upon demand of the Board, they shall be delivered to the Board f.o.b. rail car or truck at handlers' warehouse or point of storage. All such surplus walnuts so withheld by the handler shall be at the time of withholding placed by the handler, at his own expense, in suitable containers, which may be prescribed by the Board and identified by appropriate seals, stamps, or other means of identification to be furnished by the Board and to be affixed to the containers by the handler under the direction or supervision of the Board or a designated inspector.

(d) The requirement for withholding a quantity of walnuts pursuant to paragraphs (a) and (b) of this section shall be the restricted and surplus obligations, respectively. The control ob-

ligations applicable to the district of production shall apply to any walnuts transferred to the other district prior to handling. Merchantable walnuts handled in accordance with the provisions of this subpart shall be deemed to be such handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

(e) Any handler may at any time prior to the end of the marketing year satisfy his control obligations with respect to a specified quantity of certified merchantable walnuts which he then owns and has on hand and on which he declares to the Board his intention to handle, by withholding a quantity of walnuts sufficient to meet the obligations on the walnuts so declared for handling. Such declared quantity, if not handled, and the applicable withholding may be canceled by the handler prior to the end of the marketing year.

(f) Any handler withholding restricted or surplus walnuts in excess of his respective obligations may have excess walnuts of his choice freed from withholding by complying with such procedures as the Board may require to insure compliance with his obligations and identification of the remaining walnuts withheld. Similarly, he may exchange other eligible walnuts for walnuts withheld.

§ 984.55 Interhandler transfers.

(a) Within the area of production inshell walnuts other than free walnuts may be sold or delivered by one handler to another for packing or shelling and the receiving packer or sheller shall comply with the regulations made effective pursuant to this part with respect to such walnuts.

(b) A handler may, for the purposes of meeting his control obligations, acquire walnuts from another handler, and any assessments, control obligations, and inspection requirements with respect to walnuts so transferred shall be waived insofar as the seller is concerned. The Board, with the approval of the Secretary, may establish methods and procedures including necessary reports for such transfers.

(c) Except as provided in paragraphs (a) and (b) of this section, whenever transfers of walnuts are made from one handler to another, the first handler thereof shall comply with all of the regulations effective pursuant to this part.

§ 984.56 Deferment of withholding.

(a) *General.* Compliance by any handler with the requirements of § 984.54 as to the time during the marketing year when restricted and surplus walnuts shall be withheld may be deferred to any date desired by the handler up to December 31 for restricted and March 31 for surplus obligations. Such deferment shall be granted only upon the execution and delivery by such handler to the Board of a written undertaking that on or prior to the dates specified he will have fully satisfied his control obligations.

(b) *Filing of bond.* Such undertaking shall be secured by a commercial surety bond or a personal bond with surety to be filed with, and acceptable to, the Board in the amount stated in paragraph

(c) of this section, conditioned upon full compliance with such undertaking. The amount of the bond for deferment of compliance with a restricted or surplus obligation shall be the total weight of the applicable obligation multiplied by the applicable bonding rate. The cost of the bond shall be borne by the handler.

(c) *Bonding rates*—(1) *Establishment.* The bonding rate for restricted walnuts shall be the price per pound for bulk pack, U.S. No. 2, medium size inshell walnuts, f.o.b. shipping point, and for surplus walnuts the price per pound for bulk U.S. Commercial grade light amber halves and pieces, f.o.b. shipping point as determined by the Board to be prevailing at the time bonding rates are established, which shall be not later than October 15 of any marketing year in which control percentages are recommended to the Secretary.

(2) *Effective period.* The bonding rates established for any marketing year shall continue in effect after the end of such marketing year until such bonding rates are modified. After bonding rates are established for the new marketing year, the new rates shall be applicable and any bonds theretofore given for that marketing year shall be adjusted to the new rates.

(d) *Disposition of bond collections.* (1) Any sums collected through default of a handler on his bond shall be used by the Board to purchase from handlers walnuts not to exceed the total quantity of default referable to such bond or that represented by the sums collected, whichever is lesser. The Board shall at all times purchase the lowest priced walnuts offered.

(2) Any unexpended sums, which have been collected by the Board through default of a handler on his bond, remaining in the possession of the Board at the end of a marketing year shall be used to reimburse the Board for its expenses, including administrative and other costs, incurred in the collection of such sums and in the purchase of walnuts. Any balance remaining after reimbursement of such expenses shall be returned to the defaulting handler.

(3) Walnuts purchased as provided for in this section shall be turned over to the defaulting handler for restricted or surplus disposition, as appropriate. If the quantity of walnuts represented by the bond collection cannot be purchased, the Board shall distribute any unexpended sum collected, after deducting necessary expenses, to all handlers on the basis of their respective inshell handlings with respect to a restricted obligation default or total handlings, kernelweight basis, with respect to a surplus obligation default.

(e) *Satisfaction of control obligations.* Collection by the Board upon any bond filed pursuant to the provisions of this section shall be deemed a satisfaction of the control obligations represented by such collection and the handler shall be credited on his control obligation with that quantity of walnuts represented by the bond sums collected on account of such default.

DISPOSITION OF CONTROLLED WALNUTS

§ 984.60 Shelling restricted walnuts.

(a) Any handler may shell restricted walnuts which he has withheld pursuant to § 984.54 or deliver them for shelling to another handler or an authorized sheller (i.e., a person other than a handler).

(b) Any person within the area of production who desires to become an authorized sheller may submit an application to the Board. Such authorization shall be granted to the applicants for a period of one year upon submission to the Board of an agreement, in writing, to:

(1) Shell restricted walnuts within the area of production or deliver them as inshell walnuts only to another authorized sheller for shelling;

(2) Comply fully with all requirements of this part, applicable to the shelling of walnuts;

(3) Permit such audits and inspections as the Board may require to determine compliance with provisions of this part; and

(4) Make such reports, certified to the Board and the Secretary as to their correctness, as the Board may require.

§ 987.61 Export.

(a) Sale or shipment of merchantable restricted and merchantable surplus walnuts in export to destination outside of the United States, Puerto Rico, and the Canal Zone, and Canada and Cuba when included in the trade demand, shall be made only by the Board. The Board shall be obligated to export only such quantities for which it is able to find satisfactory outlets. Any handler may be designated an agent of the Board under such terms and conditions as the Board may specify for export sales. Proceeds of any export sales made by the Board after deducting all expenses actually and necessarily incurred shall be paid to the handler withholding the walnuts.

(b) The respective kernelweights of restricted and surplus walnuts so exported shall be credited against the applicable withholding obligations of the withholding handler. Upon a handler's written request during a marketing year, the Board shall transfer any part or all of such handler's exports in excess of his withholding obligations to such other handlers as he may designate.

§ 984.62 Surplus pool.

(a) Surplus walnuts which are not disposed of pursuant to § 984.61 shall be pooled not later than August 31 of the next marketing year and shall be disposed of by the Board upon the best terms and highest prices obtainable consistent with the ultimate complete disposition of surplus, subject to the following conditions:

(1) No such surplus walnuts shall be sold in the United States, Puerto Rico, or the Canal Zone, other than to Government agencies or to charitable institutions for charitable purposes or for diversion into walnut oil, poultry or animal feed, or such other uses as the Board finds to be non-competitive with normal

markets and with proper safeguards in each case to prevent such walnuts thereafter entering the channels of trade in such normal markets.

(2) The Board shall not accept delivery of any surplus walnuts for pooling and disposition prior to making a determination on or before December 15 of any marketing year as to the percentage of a handler's withholding obligation which may be accepted for pooling and disposition prior to February 15 of such year.

(b) *Disposition of proceeds from sales of pooled surplus.* Expenses incurred by the Board in receiving, handling, holding, and disposing of the pooled surplus walnuts shall be charged against the proceeds of the sales of such surplus walnuts. The remaining proceeds from the disposition of pooled surplus walnuts shall be distributed by the Board to handlers in proportion to their contribution thereto, measured in kernelweight.

(c) *Surplus pool credits.* Upon a handler's written request during a marketing year, the Board shall transfer any part or all of a handler's surplus pool credits in excess of his surplus withholding obligation to such other handler as he may designate.

§ 984.63 Storage facilities.

The Board may rent and operate, or arrange for the use of facilities for storage and handling of surplus walnuts withheld.

§ 984.64 Disposition of substandard walnuts.

Substandard walnuts may be disposed of only for manufacture into oil, livestock feed, or for such other uses as the Board determines to be noncompetitive with existing normal markets for walnuts and with proper safeguards to prevent such walnuts from thereafter entering the channels of trade in such normal markets.

§ 984.65 Compliance.

Except as provided in this subpart, no person shall handle walnuts, inshell or shelled, during any marketing year in which this subpart and any regulations issued by the Secretary hereunder are in effect, unless such person has previously met the obligations imposed by each such regulation and the provisions of this subpart.

§ 984.66 Assistance of Board in meeting control obligations.

The Board, on written request, may assist handlers in accounting for their control obligations and may aid any handler in acquiring walnuts to meet any deficiency in a handler's control obligation, or in accounting for and disposing of walnuts withheld.

§ 984.67 Exemptions.

(a) *Exemption from volume regulations.* Control percentages shall not apply to lots of merchantable inshell walnuts which are of Mammoth size or larger as defined in the then effective United States Standards for Walnuts in the Shell, or to such quantities as the

Board may, with the approval of the Secretary, prescribe.

(b) *Exemptions from assessments, quality, and volume regulations*—(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his own production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions:

(i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts or 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in subdivision (i) of this subparagraph); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

(c) *Rules and modifications.* The Board may establish, with the approval of the Secretary, such rules, regulations and safeguards and such modifications as will promote the objectives of this subpart.

EXPENSES AND ASSESSMENTS

§ 984.68 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each marketing year for the maintenance and functioning of the Board, and for such other purposes as the Secretary may, pursuant to this part, determine to be appropriate. Such expenses shall be allocated between inshell and shelled walnuts handled or declared for handling on the basis of the estimated costs of the respective operations. The Board shall file a proposed budget of expenses and rates of assessment for inshell and shelled walnuts with the Secretary as soon as practicable after the beginning of each marketing year.

§ 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay to the Board, on demand, his pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per pound for inshell or shelled walnuts fixed by the Secretary times the respective quantity of merchantable inshell or shelled walnuts he has handled or declared for handling. At any time during or after a marketing year the Secretary may increase the assessment rates as necessary to cover authorized expenses

and each handler's pro rata share shall be adjusted accordingly.

(b) *Surplus walnut pool expenses.* The Board is authorized temporary use of funds derived from assessments collected pursuant to paragraph (a) of this section to defray expenses incurred in disposing of surplus walnuts pooled. All such expenses shall be deducted from the proceeds obtained by the Board from the sale or other disposal of pooled surplus walnuts.

(c) *Refunds.* At the end of a marketing year, funds in excess of the marketing year's expenses shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments he has paid in excess of his pro rata share of the actual expenses of the Board. Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year: *Provided*, That each handler's share of such excess shall be made available to him by the Board within five months after the end of the year.

(d) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

REPORTS, BOOKS, AND OTHER RECORDS

§ 984.71 Reports of handler carryover.

Each handler, on or before August 15 and January 15 of each marketing year, shall file with the Board a written report of his handler carryover of inshell and shelled walnuts as of August 1 and January 1 on such forms as the Board may prescribe.

§ 984.72 Reports of merchantable walnuts handled.

Each handler who handles merchantable walnuts, inshell or shelled, at any time during a marketing year shall submit to the Board in such form and at such intervals as the Board may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Board may specify.

§ 984.73 Reports of disposition of controlled walnuts.

Each handler who disposes of restricted or surplus walnuts shall submit to the Board in such form and at such intervals as the Board may prescribe reports showing the quantity so disposed of and such other information pertinent thereto as the Board may specify.

§ 984.74 Reports of interdistrict shipments of walnuts.

Any shipments of walnuts between District 1 and District 2 for sale or delivery to a handler shall be reported to the Board by the receiving handler, upon receipt, on forms prescribed by the Board, showing the net weight of each shipment and such other information pertinent thereto as the Board may specify.

§ 984.75 Reports of disposition of substandard walnuts.

Each handler shall submit, in such form and at such intervals as the Board

may determine, reports of (a) his production and holdings of substandard walnuts and (b) the disposition of all substandard walnuts, including all deliveries of such walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

§ 984.76 Other reports.

Upon request of the Board, made with the approval of the Secretary, each handler shall furnish to the Board in such manner and at such times as it prescribes (in addition to such other reports as are specifically provided for herein) such other information as will enable the Board to perform its duties and exercise its powers hereunder.

§ 984.77 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operations of handlers under the provisions of this part, the Board, through its duly authorized agents shall have access to any handler's premises wherein walnuts may be held by such handler and, at any time during reasonable business hours, shall be permitted to inspect any walnuts so held by such handler and any and all records of the handler with respect to the holding or disposition of all walnuts which may have been disposed of by such handler, including records with respect to acquisitions, packing, shelling, and shipment of both inshell and shelled walnuts, as applicable. Each handler shall furnish all labor necessary to facilitate such inspections as the Board may make of such handler's holdings of any walnuts. Each handler shall store all restricted and surplus walnuts held by him in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to inspection certificates of respective lots and of all such walnuts held or disposed of theretofore.

§ 984.78 Certification of reports.

All reports submitted to the Board as required in this part shall be certified to the Secretary and the Board as to the completeness and correctness of the information contained therein.

§ 984.79 Confidential information.

All reports and records submitted by handlers to the Board, which include data or information constituting a trade secret or disclosing the trade position, or financial condition or business operations of the handler shall be kept in custody of one or more employees of the Board and shall be disclosed to no person except the Secretary.

§ 984.80 Books and other records.

Each handler shall maintain such records of walnuts received, held and disposed of by him as may be prescribed by the Board for the purpose of performing its functions under this subpart. Such books and records shall be retained and be available for examination by authorized representatives of the Board and the Secretary for a period of two years after the end of the marketing

year in which the recorded transactions are completed.

MISCELLANEOUS PROVISIONS

§ 984.83 Rights of the Secretary.

The members and alternates of the Board and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary, at his discretion, at any time. Each and every decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 984.84 Personal liability.

No member or alternate of the Board nor any employee or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate, employee or agent, except for acts of dishonesty.

§ 984.85 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 984.86 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 984.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination hereof except with respect to acts done under and during the existence hereof.

§ 984.88 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government, or name any subdivision of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 984.89 Effective time and termination.

(a) *Effective time.* The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways herein-after specified.

(b) *Termination.* (1) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(2) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(3) The Secretary shall terminate the provisions of this subpart at the end of any marketing year whenever he finds that such termination is favored by a majority of the producers of walnuts who during the preceding marketing year have been engaged in the production for market of walnuts in the States of California, Oregon, and Washington: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such walnuts produced for market within said States, but such termination shall be effected only if announced on or before July 1 of the then current marketing year.

(4) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination.*

(1) Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) Said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant hereto.

(3) Any person to whom funds, property or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligation imposed upon the members of the said Board and upon said joint trustees.

§ 984.90 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of

any other person, with respect to any such violation.

*§ 984.91 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

*§ 984.92 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

*§ 984.93 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of walnuts in the same manner as is provided for in this agreement.

Dated: June 22, 1962.

JOHN P. DUNCAN, JR.,
Assistant Secretary.

[F.R. Doc. 62-6277; Filed June 28, 1962; 8:45 a.m.]

Agricultural Stabilization and Conservation Service

[7 CFR Parts 1001, 1006, 1007, 1014, 1015]

[Docket Nos. AO-14-A 33, AO-203-A 15, AO-204-A 15, AO-302-A 7, AO-305-A 6]

MILK IN GREATER BOSTON, SPRINGFIELD AND WORCESTER, MASSACHUSETTS; SOUTHEASTERN NEW ENGLAND; AND CONNECTICUT MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Boston, Massachusetts, on April 2-4, 1962, pursuant to notice thereof issued on March 21, 1962 (27 F.R. 2802).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Secretary, United States Department of Agriculture, on May 31, 1962 (27 F.R. 5335; F.R. Doc. 62-5494) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (27 F.R. 5335; F.R. Doc. 62-5494) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under subheading 1 "Definition of 'city plant'", the seventh paragraph is changed.

2. Under subheading 2(b) "System Pooling", the second paragraph, the first sentence of the third paragraph, the second sentence of the fourth paragraph, the second sentence of the fifth paragraph, and the second sentence of the sixth paragraph are changed.

3. Under subheading 2(c) "Pooling cooperatives' supply plants under the Connecticut order", a new paragraph is added immediately after the tenth paragraph.

4. Under subheading 2(d) "Other pool plant proposals", the first paragraph is changed and the fourth, fifth and sixth paragraphs are deleted and six new paragraphs are substituted therefor.

5. Under subheading 3 "Nearby farm location differentials", the last sentence in the third paragraph is changed.

6. Under subheading 3a "Common nearby farm differential area", the first sentence in the first and second paragraphs is changed.

7. Under subheading 4 "Diversion provisions", the last paragraph is changed.

8. Under subheading 5(b) "Classification of transfers and diversions", the third sentence of the eighth paragraph is changed and two new paragraphs are added at the end.

The material issues on the record of the hearing relate to:

1. Extension of city plant pricing area;
2. Qualifications for determining pool plant status under each of the New England orders;

3. Revision of the nearby farm location differential provisions of each New England order;

4. Revision of the diversion provisions of the Southeastern New England order; and

5. Miscellaneous, administrative and conforming changes affecting the several orders.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. **Definition of "city plant".** The Greater Boston order should be amended to provide that the "city plant" price differentials be applied to all pool plants within 80 miles of Boston.

Under the present provisions of the order all plants located within 40 miles of the State House in Boston are subject to zone price differentials over the 21st zone of 54 cents on Class I milk and on milk received from producers and of 5.8 cents on Class II milk. The 54-cent differential allows for the cost of moving milk from country plants to the marketing area and other factors, including a handling allowance to compensate for the additional costs of first receiving milk at country plants and then transporting it to city distributing plants.

The 5.8 cent differential on Class II milk compensates for the cost of moving cream and nonfat dry milk, which are among the principal products made from Class II milk. These differentials are based solely on plant location and do not take into consideration whether a plant is a distributing plant or a supply plant.

Historically, with few exceptions, distributing plants have been located within a short distance of the major retail outlets served. Supply plants, on the other hand, are located in the major production areas of Vermont, New Hampshire, and Maine. Until recently the present definition of "city plant" has not caused problems as between distributing plants and supply plants.

Because of recent technological changes within the industry, distributing plant operators have expanded considerably the areas in which they distribute milk on routes. As distribution areas have expanded, distributing plants may become regulated by virtue of route sales within the marketing area even though the plants are located outside the 40-mile boundary that now distinguishes "city plants" from "country plants".

Under the present terms of the Boston order, a distributing plant located just beyond the 40-mile boundary would account for Class I milk at 17 cents per hundredweight less than plants located within the 40-mile boundary. In December 1961, a plant located in the Worcester marketing area and previously regulated under the Worcester order became regulated for one month under the Greater Boston order because its route sales within the Boston marketing area were greater than its route sales in the Worcester marketing area. The price at which the handler accounted for his Class I milk under the Boston order was 17 cents less than that applicable under the Worcester order, because the plant was so situated as to be a city plant under the Worcester order but a country plant, in the 41-60 mile zone, under the Boston order.

Another effect of the plant's shift from city plant status to country plant status was that for the month involved the minimum blended price payable to the producers was a country plant price, rather than a city plant price as was the case under the Worcester order. This country plant blended price was 17 cents less than the city plant blended price under the Boston order.

The recommended change would cause this plant to be a city plant under either order, and thus reduce variations in the class and blended prices payable at this plant in the event of any future shift between the markets. This change will have no effect on the long-run total income from Class I sales for the two markets.

The proposed amended definition of "city plant" will cause it to encompass all distributing plants now serving the Greater Boston market with the exception of a plant located at Bellows Falls, Vermont. Although this plant qualifies for pooling as a distributing plant on the basis of its route distribution in the marketing area, it also meets the order requirements for pooling as a supply plant.

To require this plant to account for Class I milk on the same basis as distributing plants that are located in close proximity to city markets, would place it at a competitive disadvantage in relation to supply plants in the same general area in which it procures milk from producers.

2. **Qualifications for pool plant status—**

(a) **Distributing plants.** The requirement under which a plant must dispose of at least 50 percent of its total receipts of fluid milk products as Class I milk to qualify as a "distributing plant" under the five New England orders should not be changed. However, a distributing plant which otherwise qualifies as a pool plant but which fails to meet such minimum percentage requirements should not be disqualified as a pool plant until the third consecutive month in which it has so failed to meet such requirements.

A proposal to reduce the Class I utilization requirements for distributing plants was offered by a cooperative association representing producers in all 5 New England markets. This producer association was concerned that in the present surplus situation, certain distributing plants might not meet the total Class I requirement and consequently would lose their pool status. The proposal presented would reduce the total Class I requirement from 50 to 25 percent in all months or, in the alternative, to the same level as the respective shipping percentage applicable to supply plants in such market.

In support of its proposal, the cooperative stated that the present utilization requirement has worked a hardship on distributing plants, and especially on those handlers receiving milk from local producers only. It was pointed out that such handlers are not able to adjust receipts to Class I needs as readily as are multiple plant operators receiving milk from supply plants. Plants receiving milk from local producers must either receive all the milk of their normal complement of producers or seek a temporary outlet through diversion or assignment of certain producers to other plants. When all the milk normally received by such handlers is not needed, it is generally the proponent cooperative which assumes the responsibility of providing a market for such milk.

It is recognized that the present requirements may at times place a burden on certain distributing plants and also on cooperative associations which have assumed supply balancing functions for the several markets. However, the important consideration in establishing standards for association with the marketwide pool is to distinguish between plants primarily engaged in Class I operations and properly part of the Class I market and those primarily engaged in manufacturing operations.

The present 50 percent Class I utilization requirements for distributing plants were included in Connecticut and Southeastern New England orders at their inception and were incorporated in the other New England orders on September 1, 1960. There has been only one instance of a plant losing pool status for failure to meet the stated Class I utilization requirements. This plant failed to qualify by a very small margin. Al-

though evidence was presented with regard to problems encountered in allocating milk supplies in a manner to insure pool status of some plants, the remedy proposed is extreme for the circumstances found.

There are serious consequences involved to a handler and to his producers when a plant loses its pool status.

Allowing a plant which fails to meet the 50 percent requirement to have pool status, as otherwise provided, for a period sufficiently long to give the plant operator time to adjust his operations in a manner which will insure continued pool status will alleviate the problems cited. This may be accomplished by providing that a distributing plant which fails to meet the Class I utilization requirements may have such pool status for two consecutive months before being excluded from pooling for failure to meet the specified requirements.

(b) *System pooling.* The pooling requirements for supply plants under the Greater Boston order should be modified to provide more flexibility for plants pooling on a "system" basis.

The Boston order now permits system pooling during the months of August through November for two or more supply plants operated by the same handler if the total shipments to regulated distributing plants under the Greater Boston order in each month of the July-November period are at least 15 percent of the combined dairy farmer receipts in the month and if each plant in the system ships to regulated distributing plants at least 15 percent of its dairy farmer receipts in the month of July.

A proposal presented would modify the system pooling provisions of the Boston order so that the system pooling could apply in July also, with each plant in a pooled system having the choice of shipping 15 percent of its dairy farmer receipts to regulated distributing plants under the Greater Boston order in any one of the months of July through November. Under the proposal the system as a whole would continue to be required to ship 15 percent in each of the months of July through November.

The provision that each plant in a system ship 15 percent in the first month of the qualifying period is intended to demonstrate such plant's ability and right to association with the pool. Demonstration of the ability to ship from a particular plant is a reasonable requirement for its participation in a system and should be continued. However, requiring each plant in a system to meet the specified shipping percentage in the month of July tends to nullify in that month the objectives of the system pooling provisions.

In multiple plant operations it is normally more economical to ship milk from certain supply plants closest to the market while more distant milk is held up country for manufacturing purposes. Requiring all plants in a system to ship 15 percent of its dairy farmer receipts to regulated distributing plants under the Greater Boston order in the same month may result in uneconomic "back hauling" of milk and increased hauling charges for milk received from more distant plants.

The objectives of orderly marketing of supply plant milk will be maintained and the marketwide pool adequately protected if each supply plant in a system is allowed to make its qualifying shipment in any one of the months of July through November. The system in its entirety, however, should be required to ship 15 percent to regulated distributing plants under the Greater Boston order of the total dairy farmer receipts in each of these months. As is presently provided, a plant entering the system for the first time should establish its association with the pool by making a qualifying shipment apart from the remainder of the system in the first month in which it becomes associated with the market.

In opposition it was stated that the adoption of this proposal would make it easier for handlers to qualify plants. However, since each plant will continue to be required to make individual shipments in at least one month and since a system must continue, as before, to ship not less than 15 percent of its total dairy farmer receipts in each month of the qualifying period, the pooling standards will not be significantly changed.

(c) *Pooling cooperatives supply plants under the Connecticut order.* The Connecticut order pool plant provisions should be amended to facilitate the pooling of producer-operated supply plants that serve a supply-balancing function for the market.

A proposal to provide automatic pool status for a plant operated by a cooperative association was supported by two major cooperative associations in the market. Representatives of both cooperatives testified that such a provision should apply to plants that serve an essential supply-balancing function for the market. It was suggested by one of the cooperatives that an appropriate method might be to designate a cooperatively-owned plant as a pool plant if a large percentage of the member dairy farmers delivering to such plant are in the Connecticut order nearby farm location differential area.

Each of the two cooperatives supporting the proposal operates plants now pooled as supply plants under the Connecticut order. Although their operations differ in some respects, both cooperatives perform important supply-balancing functions for Connecticut proprietary handlers and insure markets for member producers.

One of the cooperative plants, located at Great Barrington, Massachusetts, regularly receives the milk of certain producers for sale in various markets. Milk is assembled at Great Barrington for regular delivery to Connecticut order distributing plants in the quantities needed to fulfill day-to-day fluid requirements of its buying handlers. On days when distributing plants supplied by this plant are not operating, milk is shipped from Great Barrington for disposition in outside markets.

In addition to supplying handlers directly from its Great Barrington plant, the cooperative also supplies milk to Connecticut distributing plants in bulk tank trucks. Frequently, when this milk is not needed by the handler, it is moved

to the Great Barrington plant as producer milk and there assembled for outside disposition. In this manner the co-operative not only serves as a supply plant for certain distributing plants but also assists such plants by marketing milk of its members which is normally delivered to such plants directly from farms.

The other cooperative operates a supply plant at Hartford, Connecticut, at which milk is received from member producers. In addition, member milk is moved directly from farms to some 65 buying handlers' distributing plants. A portion of the milk received at the co-operative's supply plant is moved regularly to distributing plants and some is used as supplemental supplies for buying handlers who normally receive milk directly from cooperative members' farms. On weekends and on other days when distributing plants are not operating, the milk normally received at buying handlers' plants is received as producer milk at the Hartford plant. Most buying handlers receive only the amount of milk needed to fulfill their fluid needs. When necessary the cooperative obtains outside milk to fulfill handlers' requirements.

The plants for which automatic pooling was requested perform an essential and necessary service to the market in supplying handlers' needs and in providing a market for milk in excess of fluid requirements. The amount of milk supplied to distributing plants by proponent cooperatives would be more than ample to qualify such plants if received there and then moved on to the proprietary handler, but with the wide use of bulk tank delivery it is more economical in most cases to cause such milk to be delivered directly from the farm to distributing plants. When moved by the latter method the milk, of course, is not available as a qualifying shipment from the cooperative's plant.

Each cooperative's plant is so located that member milk could be first received there and then transported to buying handlers' distributing plants. This would facilitate the qualification of such plants but could force producer associations to make uneconomical movements of milk for the sole purpose of assuring pool status for their plants.

The proponent cooperatives supply a large percentage of their members' milk deliveries to distributing plants, either directly or through the supply plants for which automatic pooling is requested. This service provided by proponent cooperatives may be appropriately recognized in the pooling of such supply plants.

The order should allow a cooperative association to pool automatically one supply plant if the total deliveries of milk of member producers to Connecticut distributing plants, either directly or through its supply plants, are equal to at least 50 percent of the total receipts of producer milk marketed by such cooperative. Such a provision will make it possible for a cooperative to direct producer milk from the farms to distributing plants when this method is more economical than receiving such milk at its plant. The amendment

would base such qualification of a cooperative's supply plant on the aggregate, and continuing, delivery performance and service to the market and would be available on the above basis to any cooperative association performing a similar service.

To prevent the possibility of duplication of regulation by two or more orders of a cooperative's supply plant which has automatic pooling status under the Connecticut order, such order should provide that both shipments from such plant and the direct deliveries from its producer-members to plants in the Connecticut market should apply toward meeting the Connecticut pooling requirements when comparison with shipments to another market is required to determine the market in which the plant should be pooled. This provision is consistent with the above basis for automatic pooling under the Connecticut order since to obtain automatic pool status the plant must have close association with the market.

Although one of the proponent cooperatives presently has two supply plants pooled under the order, it was stated by a representative of such association that the provision should be limited to their plant closest to the marketing area, which plant is presently performing the services described. Limiting the proposed provision to a cooperative's plant closest to the marketing area is reasonable in view of the underlying considerations.

The suggestion that a cooperative's supply plant be designated as a pool plant if the members delivering to such plant are located in a certain designated area would not base the plant's qualification on performance of a service to the market and should not be adopted for that reason.

If a cooperative elects to have a plant which qualifies partially on the basis of direct-shipped milk included as a part of a plant system, the shipment requirements for system pooling should be the determining factor for qualifying such plant within the unit.

(d) *Other pool plant proposals.* The performance standards for supply plants to pool under the various orders should be revised.

There were two proposals to alter the New England order shipping percentages for supply plants. One proposal would lower the Connecticut, Southeastern New England, Springfield and Worcester shipping percentages to 15 percent, the level now contained in the Boston order. The other proposal would raise the Boston order shipping requirement to 30 percent, the level presently contained in the other four New England orders. Another proposal to amend only the Southeastern New England pooling provisions would require the pooling provisions of such order to be met before a country plant could be pooled under the order, notwithstanding that the plant was pooled in the qualifying months under another order.

For the most part the proposals to alter the shipping percentages and related proposals were intended to facilitate movements of milk among the markets and thereby promote better intermarket price alignment.

The evidence presented in support of the proposal to reduce pooling requirements for supply plants was concerned primarily with marketing under the Southeastern New England order, although the proponent indicated the desirability of modifying corresponding provisions in the other orders to correlate them with any amendments adopted in the Southeastern New England order. It was recognized in the recommended decision that some immediate problems might be alleviated temporarily by changing the pooling requirements under the Southeastern New England order. However, it was recognized also that problems of pooling under other New England orders might also be raised by such action and that amendatory action therefore should be deferred.

Following the issuance of the recommended decision, cooperative associations representing the vast majority of the producers in the New England markets requested that the proposed pooling qualifications for supply plants be revised by installing a 15 percent minimum pooling requirement in all the New England Federal orders, with shipments to any of the New England orders to apply toward meeting the 15 percent. A plant qualifying under this minimum percentage would be pooled in the market to which the largest quantity was shipped from the plant.

They stressed in their exceptions that as a result of the Supreme Court decision issued June 4, 1962, concerning Lehigh Valley Cooperative Farmers, Inc., et al., petitioners, v. United States et al., of which official notice is hereby taken, there is the strong possibility that the pooling structure in the New England markets would be significantly weakened, thus warranting the requested revision. It was pointed out that presently regulated supply plants in the New England markets could be withdrawn from pooling status but continue to ship milk to the market for Class I purposes. The movement of unpriced milk to the regulated markets could thus result in the disintegration of classified pricing and market equalization of producer returns for milk, the primary basis for achieving orderly marketing conditions.

The application of a minimum 15 percent shipping requirement, based upon combined shipments to the five New England markets, would reduce sharply the opportunities to withdraw supply plants from regulation and to move unpriced milk to such markets. It was felt such a requirement would suffice pending a longer-term and more comprehensive solution to the problems that would be created by the ready availability of unpriced milk.

While it was concluded in the recommended decision that action to amend the supply plant pooling requirements on the basis of this record might be deferred pending another hearing review, the Supreme Court's decision on the previously mentioned case gives increased significance to the proposal in the notice of hearing to reduce pooling requirements in all the markets to a minimum 15 percent shipment, the level provided in the current Boston order, and to the testi-

mony supporting such proposal. To insure continued pooling of milk available to the New England markets in a manner that will deter price undercutting of milk regularly supplied to such markets the pooling requirements for supply plants should be amended in the manner requested.

The high degree of uniformity needed in the provisions of the five New England orders necessitates that all orders be treated in the same manner. The ability to move milk supplies among markets applies equally to the Connecticut market as well as to the others. Thus, separate and differing action as requested by Connecticut producers should not be adopted. It is concluded, however, that upon clarification of the full intent of the Supreme Court's decision further review in hearing of the provisions of the New England Federal orders may be warranted.

3. *Nearby farm location differentials.* The town of Brookline, Vermont, should be included in the 23-cent per hundred-weight nearby farm differential area of the Springfield order. No other change should be made in the nearby farm location differential provisions of the five New England Federal orders.

A producer in the Springfield market whose farm is located in the southern half of the town of Brookline, Vermont, proposed that the southern portion of such town be added to the present 23-cent nearby farm differential area of the Springfield order. Recent legal action over disputed town boundary lines has resulted in a change in the boundary between the town of Brookline and the adjoining town of Putney from that which existed at the time the present 23-cent nearby farm differential area was established. As a result of this action, the southern boundary of the town of Brookline was moved southward to adjoin the Vermont town of Dummerston. This places the major portion of the town of Brookline south of the northern limit of the current 23-cent nearby farm differential area in the adjoining towns of Putney and Newfane. Also, the enlarged town of Brookline now encompasses a previous portion of the town of Putney which currently is in the 23-cent differential area. The proponent contends that this major portion of the town of Brookline logically should be included in that differential area.

In conformity with the practice under the Springfield order of defining nearby farm differential areas by town boundaries, the Springfield order should be amended to include the town of Brookline in its entirety within the 23-cent nearby farm differential area under that order. This will provide more equitable pricing to any Springfield producer with a farm located in the town of Brookline as compared with neighboring Springfield producers, and will insure payment of the differential to any Springfield producer whose farm may be located in that portion of the town of Brookline which was formerly in the town of Putney.

3a. *Common nearby farm differential area.* Three cooperative associations proposed that the nearby farm location differential provisions of all the New England orders be amended to provide

that any producer whose farm location in New England now permits him a differential of 46 cents or of 23 cents per hundredweight under any New England order shall receive the highest farm location differential which he would receive under any of these orders, irrespective of the New England order under which his milk may be pooled. The proponents contended that changes in recent years in the marketing of milk in the five markets necessitate further coordination of the nearby farm differentials of these orders.

Conversion to bulk tank delivery of milk from farm to market, closing and consolidation of distributing plants with remaining plants serving more than one market, shifting of plants between markets on a month-to-month basis, and expansion of Federal order regulation to the Southeastern New England and Connecticut markets in recent years were given as factors causing some producers to become disassociated with their customary market. The shifting of producers to other markets has resulted, in some cases, in a reduction in returns to such producers because of a change in the nearby farm differential to which they are entitled. When producers must be transferred to another market, the cooperative association shifting the milk considers it imperative to find a new market which will entitle the producers involved to the same nearby farm differential which they had received previously. Lack of uniformity in the nearby farm differential zones of the five orders was described as an impediment to the maintenance of customary returns to producers. Proponents indicated that common nearby farm differential areas for all five orders would contribute to the natural and orderly movement of producer milk to the several New England markets, and would allow the shifting of individual producers between markets without undue loss in their returns.

These orders presently provide that there be deducted from the respective pools sufficient funds to return to producers located in specified areas relatively near to the respective marketing areas either 46 cents or 23 cents per hundredweight in excess of the applicable blended price, depending upon location. These provisions were established in recognition of the customary pattern of prices that existed in these markets prior to Federal order regulation. Such prices reflected the higher returns received by nearby producers because of their proximity to the principal consumption areas as compared with lower returns received by producers more distant from such areas. As pointed out in the record, the problems described by the proponents at this hearing do not warrant such a change in the nearby farm differential provisions at the present time. The plan suggested by proponents would result in a pricing structure for producers under the five orders considerably different from the historical price patterns on which the present provisions were based. In many cases producers who customarily have received a 23-cent nearby farm differential or none at all might become eligible to receive a higher differential in mar-

kets with which they have not had an historical association. As long as pricing is maintained by individual market areas, the function of the nearby farm differential properly is related to the orientation of supplies for the several markets individually.

The several individual cases of producer shifts between markets, which were cited by the proponents to illustrate the need for more uniform nearby farm differentials among the five markets, indicate that at least some of the problems encountered by the proponents have not been of a continuing nature. In certain instances the cooperative associations involved were able to shift their producer members to other markets without loss in returns, and in at least one instance specific amendment action was taken by the Department to alleviate the problem.

As suggested in the record, factors such as the rapid conversion to bulk tank delivery of milk and the closing and consolidation of distributing plants indicate the pertinency of review of the present structure of nearby farm differential areas in relation to any proposed changes in the scope of the regulation. The record of this hearing, however, does not contain evidence that is sufficiently exploratory or comprehensive in nature to support a substantial deviation from the present design of the nearby farm differential provisions.

On the basis of the record of this hearing, it is therefore concluded that no changes, other than as described for the Springfield order, should be made in the nearby farm location differential provisions of the New England orders.

4. *Diversion provisions.* The producer definition of the Southeastern New England order should be amended to provide for more flexible diversion privileges than it now provides.

The definition of producer sets forth the requirements which a dairy farmer must meet if he is to qualify as a producer under the order. Stipulated in these requirements are certain limitations regarding any diversion of his milk from the pool plant where it is customarily received to an unregulated plant. Should a dairy farmer's milk be diverted in excess of the prescribed limits, such person would become ineligible as a producer for the entire month in which the "over-diversion" occurred. The present provisions allow diversions without limitation during any of the months of April through June. During July, August, or September, however, the milk of a producer may not be diverted on more than 8 days per month (4 days in the case of every-other-day delivery). During each of the remaining months of October through March, diversions are limited to 12 days per month (6 days in the case of every-other-day delivery).

A proprietary handler proposed that the diversion provisions under the Southeastern New England order be made identical to those of the Greater Boston order. A witness representing a cooperative association which has members delivering milk to the proponent's plant gave testimony in support of this proposal. Each stressed that the present diversion provisions are too stringent

and work a hardship on handlers and cooperative associations in keeping dairy farmers qualified as producers. They contended that handlers should be permitted to match their diversion schedules against their supply-demand patterns. Such factors as a substantial oversupply of milk in certain months, the loss of major outlets such as military installations, and unusual circumstances causing disruptions in plant operations create the need for greater flexibility in the diversion provisions for producer milk. They indicated that diversion provisions similar to those in the Greater Boston, Springfield, and Worcester orders would provide such flexibility without need to increase the total number of days on which the milk of a producer could be diverted.

The diversion limitations now prescribed for milk diverted from a pool plant to an unregulated plant should be modified to permit diversion of a producer's milk on any day: Provided that his milk is not diverted on more days during the 12 months ending with the current month than the number of days in the 12-month period it is delivered to a pool plant. Under this arrangement diversion would not be tied to monthly limits. Instead, the allowable number of days on which producer milk might be diverted could accumulate over a period of several months. Such a modification would not result in an increase in the total number of allowable days of diversion. In fact, on an annual basis five fewer days of diversion would be allowed. The modification would provide, however, an element of flexibility in the diversion of milk to an extent heretofore not possible under the terms of the Southeastern New England order.

The diversion provisions proposed herein would afford a handler the opportunity of adjusting more efficiently his milk supply to his fluid milk requirements. Any unusual marketing conditions or unexpected interruptions in plant operations would tend to have a less disruptive effect on the daily coordination of a handler's supply with his sales. From time to time handlers find it necessary, for the purpose of keeping dairy farmers qualified as producers, to move milk which is surplus to their operation from farms to their distributing plants, unload and reload the milk at that point, and move the milk to manufacturing plants located nearer such farms than the distributing plants. Also, the handler occasionally finds it to his advantage to release producers rather than to over-divert their milk, inasmuch as over-diversion results in the receipt of other source milk, with possible adverse effects on cost to the handler. More flexible diversion privileges would promote more orderly marketing of milk.

A corollary provision should be included to accommodate the dairy farmer who would not otherwise have the diversion privilege, but whose milk is moved from his farm in a tank truck in which it is commingled with milk from other farms, the milk from a majority of which farms is diverted within the limits proposed herein.

5. *Miscellaneous, administrative and conforming changes*—(a) *New England Class I price formula*. One of the factors used in the New England Class I price formulas is the United States Wholesale Commodity Price Index. This index is compiled and issued by the Bureau of Labor Statistics, U.S. Department of Labor.

Until March 1962 this index had been reported with 1947-49 as the base years. Beginning with March 1962 the Bureau updated its formula and began reporting this index with the years 1957-59 as the base period.

The Class I price formula contains a conversion factor (1.19) which has been used to convert the monthly index to a 1958 equivalent, the base year used for computing all Class I pricing factors.

Because of the time lag in the use of the price index, the months of November 1957 through October 1958 would have been used to compute the Class I prices for the months in 1958. The average of the monthly indexes for this period, on a 1957-59 base, is 100.25.

Accordingly, the factor 1.0025 should replace the factor 1.19 for the purpose of converting the monthly wholesale commodity price indexes to a 1958 equivalent. This amendment does not change the New England basic Class I price but is necessary to accommodate the Department of Labor's revised method of reporting the index.

Another factor used in the Class I pricing formula is the per capita disposable income in the United States as computed by the U.S. Department of Commerce. Until recently this income series carried a reference "continental United States". The reference to the word "continental" is no longer employed by the Department of Commerce and the New England orders should be amended accordingly.

(b) *Classification of transfers and diversions*. The Connecticut order should be amended to provide that during the months of July through November milk transferred or diverted in bulk, or transferred as a packaged fluid milk product containing at least 3 percent butterfat, to pool plants under the New York-New Jersey Federal order shall be classified as Class I milk to the extent of that amount of such milk assigned to Class I-A under the New York-New Jersey order and not subject to compensatory payments under such order.

The Connecticut order presently provides that milk moved from a plant regulated under that order to a New York-New Jersey plant shall be classified as Class II milk, regardless of its ultimate use or assignment under the New York-New Jersey order. One exception is made, however, in that a Class I classification is given to any milk so moved which is classified as Class I-B milk under the New York-New Jersey order. In his decision issued February 11, 1959 (24 F.R. 1049) with respect to the promulgation of the Connecticut order, the Secretary stated that such a provision was established in recognition of those instances when Connecticut handlers might find it more convenient and economical to move surplus milk to nearby New York-New Jersey distributing plants

rather than to more distant manufacturing plants.

Such a movement of milk could occur even though the New York-New Jersey plants customarily obtain their milk supplies from the New York-New Jersey milkshed and such milkshed has ample supplies for all the fluid milk needs of that market. The Secretary further stated that the Connecticut milk so moved should be considered as surplus to the needs of the Connecticut market. The classification provisions of the two orders were coordinated in this manner to provide for the appropriate classification of milk moved from Connecticut plants to New York-New Jersey plants in accordance with these findings.

Unusual marketing conditions, however, such as those resulting from the strike of employees at New York City milk plants in October and November 1961 which led to the shipment to New York City of considerable quantities of bottled milk from Connecticut regulated plants, may cause producer milk under the Connecticut order to be priced in certain months of the year in a manner which does not return to the producers the full use value of the milk.

In the specific case referred to, New York-New Jersey supply plants moved bulk milk to Connecticut plants for processing and packaging, and these plants in turn moved packaged fluid milk products to New York-New Jersey plants from which the milk was disposed of on routes in the New York-New Jersey marketing area. Because the amount of milk moved from Connecticut plants to New York-New Jersey plants for distribution was at least equal to the amount moved to the Connecticut plants from the New York-New Jersey supply plants, the New York-New Jersey order milk so moved was required to be classified as Class I-A milk under that order. No compensatory charges under the New York-New Jersey order were applicable on the milk received from the Connecticut plants since an equivalent amount of Class I-A milk had been moved to Connecticut plants.

The Connecticut order provides that during the months of July through November the lesser of (a) 15 percent of producer receipts, or (b) the amount of Class II utilization remaining after the assignment of receipts of other source milk from non-Federal order sources, be set aside prior to the assignment of receipts of milk from other Federal order markets.

In the cases cited, this procedure resulted in the assignment of milk received from New York-New Jersey plants to the Class I utilization of the Connecticut plants in these months. Consequently, an equal amount of Connecticut producer milk had to be assigned to Class II utilization at those plants.

The set-aside provision in the Connecticut order was established in recognition that the months of July through November were the months of greatest demand for fluid milk in the market in relation to regular supplies and, hence, the months in which supplemental supplies most likely would be needed by Connecticut plants. The New York-New

Jersey milk moved to Connecticut plants was moved back to New York-New Jersey plants in packaged form for disposition in the New York-New Jersey marketing area and was not used to supplement the Connecticut market under conditions of inadequate supplies. The Connecticut producer milk, on the other hand, which was classified as Class II milk because of the set-aside provision of the order, was in fact used for Class I purposes in the Connecticut market. Thus, the returns to the Connecticut producers did not reflect the actual utilization of the milk in the market for which it was produced.

To achieve equitable pricing of the milk of Connecticut producers under unusual marketing conditions such as herein described, it is concluded that the classification provisions of the Connecticut order should be amended as provided herein.

Connecticut producers noted in their exceptions that the proposed provision should be applicable during all months rather than just in the months of July through November. The circumstances to which this amendment was directed in the recommended decision can occur only during the months of July through November.

In view of the Supreme Court decision previously discussed, however, the scope of this problem is changed. The possibility now exists that Connecticut producer milk could be delivered to a New York-New Jersey pool plant at the Class II price and be assigned to Class I-A under the New York-New Jersey order, but without the full value for such milk commensurate with its use accruing to producers in either market. Because this possibility could exist during any month of the year, it is necessary to revise the transfer and diversion provisions of the Connecticut order to provide that Connecticut producers shall receive the Class I price during any month if such milk is assigned to Class I-A and not subject to compensating payment under the New York-New Jersey order.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the proposed marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreements and orders. Annexed hereto and made a part hereof are ten documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Springfield, Massachusetts, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Springfield, Massachusetts, Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Worcester, Massachusetts, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Worcester, Massachusetts, Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Southeastern New England Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Southeastern New England Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Connecticut Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Connecticut Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered. That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreements are identical

with those contained in the orders as hereby proposed to be amended by the attached orders which will be published with this decision.

Determination of representative period. The month of April 1962, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached orders amending the order regulating the handling of milk in the Greater Boston, Springfield, and Worcester, Massachusetts, Southeastern New England, and Connecticut marketing areas are approved or favored by producers, as defined under the terms of the orders as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing areas.

Signed at Washington, D.C., on June 25, 1962.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 62-6345; Filed, June 28, 1962;
8:56 a.m.]

Order¹ Amending the Order Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area
§ 1001.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as

will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Greater Boston, Massachusetts, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby further amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Assistant Secretary, United States Department of Agriculture, on May 31, 1962, and published in the FEDERAL REGISTER on June 6, 1962 (27 F.R. 5335; F.R. Doc. 62-5494) shall be and are the terms and provisions of this order and are set forth in full herein, subject to the following modifications:

In § 1001.20, a new paragraph (f) is added.

1. In § 1001.3, the number "40" in paragraphs (b) and (c) is changed to "80" and paragraph (f) is revised as follows:

§ 1001.3 Definitions of plants.

(f) "Distributing plant" means any processing and packaging plant: (1) With route disposition in the marketing area in the month of not less than 10 percent of its receipts from dairy farmers or of its total receipts of fluid milk products; and (2) with total Class I disposition in the month or in either of the two preceding months of at least 50 percent of its total receipts of fluid milk products in the corresponding month.

2. In § 1001.20, the word "August" in the introductory text of paragraph (d) is changed to "July" and new paragraphs (d) (3) and (f) are added as follows:

§ 1001.20 Basic pooling requirements.

(d) * * *
(3) No plant shall be eligible for pool plant status under this paragraph in November of any year unless it has met the requirements of paragraph (c) of this section in one of the months of July through October of that year.

(f) It is a supply plant from which a greater quantity of fluid milk products is shipped to regulated distributing plants under this order than to plants to which qualifying shipments of fluid milk products may be made under any other New England Federal order, and from which the total quantity of fluid milk products shipped to all plants to which qualifying shipments of fluid milk products may be made under any New England Federal

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

order is at least 15 percent of its total receipts of milk from dairy farmers.

§ 1001.42 [Amendment]

3. In § 1001.42(c), the phrase "Within 40" in Column A of the table is changed to "Within 80" and the second, third and fourth lines in Columns A, B, C and D of the table are revoked.

4. In § 1001.48(a) the word "continental" in subparagraph (2) is changed to "the" and subparagraph (1) is revised as follows:

§ 1001.48 Computation of New England basic Class I price.

* * * * *

(a) * * *

(1) Divide by 1.0025 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1957-59 as the base period.

Order¹ Amending the Order Regulating the Handling of Milk in the Springfield, Massachusetts, Marketing Area

§ 1006.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Springfield, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Springfield, Massachusetts, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby further amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Assistant Secretary, United States Department of Agriculture, on May 31, 1962, and published in the FEDERAL REGISTER on June 6, 1962 (27 F.R. 5335; F.R. Doc. 62-5494) shall be and are the terms and provisions of this order and are set forth in full herein subject to the following modifications:

In § 1006.20, paragraph (c) is changed and a new paragraph (d) is added.

1. In § 1006.3, paragraph (f) is revised as follows:

§ 1006.3 Definitions of plants.

* * * * *

(f) "Distributing plant" means any processing and packaging plant: (1) With route disposition in the marketing area in the month of not less than 10 percent of its receipts from dairy farmers or of its total receipts of fluid milk products; and (2) with total Class I disposition in the month or in either of the two preceding months of at least 50 percent of its total receipts of fluid milk products in the corresponding month.

2. In § 1006.48(a), the word "continental" in subparagraph (2) is changed to "the" and subparagraph (1) is revised as follows:

§ 1006.48 Computation of New England basic Class I price.

* * * * *

(a) * * *

(1) Divide by 1.0025 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1957-59 as the base period.

§ 1006.64 [Amendment]

3. In § 1006.64(a), the town of "Brookline" is added to the list of Vermont towns.

4. In § 1006.20, the number "30" in paragraph (c) is changed to "15" and a new paragraph (d) is added as follows:

§ 1006.20 Basic pooling requirements.

* * * * *

(d) It is a supply plant from which a greater quantity of fluid milk products is shipped to regulated distributing plants under this order than to plants to which qualifying shipments of fluid milk products may be made under any other New England Federal order, and from which the total quantity of fluid milk

products shipped to all plants to which qualifying shipments of fluid milk products may be made under any New England Federal order is at least 15 percent of its total receipts of milk from dairy farmers.

Order¹ Amending the Order Regulating the Handling of Milk in the Worcester, Massachusetts, Marketing Area

§ 1007.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the finding and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Worcester, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Worcester, Massachusetts, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby further amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Assistant Secretary, United States Department of Agriculture, on May 31, 1962, and published in the FEDERAL REGISTER on June 6,

1962 (27 F.R. 5335; F.R. Doc. 62-5494) shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following modifications: In § 1007.20, paragraph (c) is changed and a new paragraph (d) is added.

1. In § 1007.3, paragraph (f) is revised as follows:

§ 1007.3 Definitions of plants.

(f) "Distributing plant" means any processing and packaging plant: (1) With route disposition in the marketing area in the month of not less than 10 percent of its receipts from dairy farmers or of its total receipts of fluid milk products; and (2) with total Class I disposition in the month or in either of the two preceding months of at least 50 percent of its total receipts of fluid milk products in the corresponding month.

2. In § 1007.48(a) the word "continental" in subparagraph (2) is changed to "the" and subparagraph (1) is revised as follows:

§ 1007.48 Computation of New England basic Class I price.

(a) Divide by 1.0025 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1957-59 as the base period.

3. In § 1007.20, the number "30" in paragraph (c) is changed to "15" and a new paragraph (d) is added as follows:

§ 1007.20 Basic pooling requirements.

(d) It is a supply plant from which a greater quantity of fluid milk products is shipped to regulated distributing plants under this order than to plants to which qualifying shipments of fluid milk products may be made under any other New England Federal order, and from which the total quantity of fluid milk products shipped to all plants to which qualifying shipments of fluid milk products may be made under any New England Federal order is at least 15 percent of its total receipts of milk from dairy farmers.

Order¹ Amending the Order Regulating the Handling of Milk in the Southeastern New England Marketing Area

§ 1014.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in

conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southeastern New England marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Southeastern New England marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby further amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Assistant Secretary, United States Department of Agriculture, on May 31, 1962, and published in the FEDERAL REGISTER on June 6, 1962 (27 F.R. 5335; F.R. Doc. 62-5494) shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following modifications:

Sections 1014.2(e) and 1014.3(c)(3) are changed.

1. In § 1014.2, paragraph (e) is revised as follows:

§ 1014.2 Definitions of persons.

(e) "Producer" means any dairy farmer (except a dairy farmer for other markets, a dairy farmer with respect to exempt milk delivered, any person holding producer-handler status under any Federal order, or a dairy farmer who is a producer under another Federal order with respect to milk diverted from a plant subject to such other order) whose milk is delivered from his farm to a pool plant

or is diverted from a pool plant to a plant specified in subparagraphs (1) through (3) of this paragraph if the handler, in filing his monthly report pursuant to § 1014.30, reports the milk as receipts from a producer at such pool plant: *Provided*, That this definition shall not include a local or state government not engaged in the resale of any packaged fluid milk products on routes, if such governing body so elects by written notification to the market administrator and the handler to which it delivers, in which event such election shall be effective for the 12 months beginning with the month in which the election is made, and for each subsequent month until cancelled in writing: *And provided further*, That any dairy farmer whose milk is diverted on more than the number of days specified shall not be considered to qualify under this paragraph with respect to any of his deliveries of milk during such month:

(1) A regulated plant of another handler;

(2) A regulated plant of the same handler in the same plant zone; or

(3) An unregulated plant under the following conditions:

(i) Milk moved from such farm is not diverted to an unregulated plant from such pool plant on more days during the 12 months ending with the current month than it is delivered to such pool plant; or

(ii) Milk moved from such farm is moved in a tank truck in which it is commingled with milk from other farms, the milk from a majority of which farms is diverted from such pool plant during the month in accordance with subdivision (i) of this subparagraph.

2. In § 1014.3, paragraphs (c)(1), (c)(3)(i), and (d) and the introductory text of paragraph (c)(3) are revised as follows:

§ 1014.3 Definitions of plants.

(c) ***

(1) Any receiving plant (except the plant of a producer-handler under any Federal order) with route disposition in the marketing area in the month of not less than 10 percent of its receipts from dairy farmers and with total Class I disposition in the month or in either of the two preceding months of at least 50 percent of its total receipts of fluid milk products in the corresponding month, unless the market administrator determines that such plant disposed of a greater proportion of its Class I milk in another Federal order marketing area on routes than was so disposed of in this marketing area.

(3) Except as provided in subdivisions (i) through (iv) of this subparagraph, any receiving plant (other than a plant fully regulated under the provisions of any Federal order on the basis of its route disposition) from which a greater quantity of fluid milk products is shipped during the month to a pool plant qualified pursuant to subparagraph (1) of this paragraph or to a regulated plant under this order other than a pool plant than

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

to plants to which qualifying shipments of fluid milk products may be made under any other New England Federal order, and from which the total quantity of fluid milk products shipped to all plants to which qualifying shipments of fluid milk products may be made under any New England Federal order is at least 15 percent of its total receipts of milk from dairy farmers: *Provided*, That any plant qualifying for pooling under the Boston order on the basis of greater shipments under such order, but which is designated as a nonpool plant under the Boston order for such month, and from which the qualifying shipments under this order are at least 15 percent of its receipts of milk from dairy farmers and are greater than under any other order except Boston shall also qualify under this subparagraph.

(i) Any plant qualifying as a pool plant pursuant to this subparagraph, other than a plant which retains automatic pool plant status for the month under subdivision (ii) or (iii) of this subparagraph, shall be a nonpool plant in any month of December through June in which it retains automatic pool plant status under another New England Federal order.

(d) "Regulated plant" means (1) any pool plant, or (2) any other plant (except the plant of a producer-handler under any Federal order) with route disposition in the marketing area in the month of not less than 10 percent of its total receipts of fluid milk products and with total Class I disposition in the month or in either of the two preceding months of at least 50 percent of its total receipts of fluid milk products in the corresponding month, unless the market administrator determines that such plant disposed of a greater proportion of its Class I milk in another marketing area on routes.

3. In § 1014.41(a), the word "continental" in subparagraph (2) is changed to "the" and subparagraph (1) is revised as follows:

§ 1014.41 Computation of New England basic Class I price.

(a) * * * * *

(1) Divide by 1.0025 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1957-59 as the base period.

Order¹ Amending the Order Regulating the Handling of Milk in the Connecticut Marketing Area

§ 1015.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments

thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Connecticut marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Connecticut marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby further amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Assistant Secretary, United States Department of Agriculture, on May 31, 1962, and published in the FEDERAL REGISTER on June 6, 1962 (27 F.R. 5335; F.R. Doc. 62-5494) shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following modifications:

Sections 1015.3(c) (2) and 1015.22(c) (2) are changed.

1. In § 1015.3, a colon is placed after the word "means" which immediately precedes paragraph (c) (1), paragraphs (c) (1), (c) (2) (i), and (d) and the introductory text of paragraph (c) (2) are revised, and a new paragraph (c) (2) (vi) is added as follows:

§ 1015.3 Definitions of plants.

(c) * * *

(1) Any receiving plant (except the plant of a producer-handler under any Federal order) with route disposition in the marketing area in the month of not less than 10 percent of its receipts from dairy farmers and with total Class I disposition in the month or in either of the two preceding months of at least 50 percent of its total receipts of fluid milk products in the corresponding month, unless the market administrator determines that such plant disposed of a greater proportion of its Class I milk in another Federal order marketing area on routes than was so disposed in the marketing area.

(2) Except as provided in subdivisions (i) through (vi) of this subparagraph, any receiving plant (other than a plant fully regulated under the provisions of any Federal order on the basis of its route disposition) from which a greater quantity of fluid milk products is shipped during the month to a pool plant qualified pursuant to subparagraph (1) of this paragraph, to a producer-handler or to a regulated plant under this order other than a pool plant than to plants to which qualifying shipments of fluid milk products may be made under any other New England Federal order, and from which the total quantity of fluid milk products shipped to all plants to which qualifying shipments of fluid milk products may be made under any New England Federal order is at least 15 percent of its total receipts of milk from dairy farmers: *Provided*, That any plant qualifying for pooling under the Boston order on the basis of greater shipments under such order, but which is designated as a nonpool plant under the Boston order for such month, and from which the qualifying shipments under this order are at least 15 percent of its receipts of milk from dairy farmers, and are greater than under any other order except Boston shall also qualify under this subparagraph: *And provided further*, That in the case of any plant for which qualifications pursuant to subdivision (vi) of this subparagraph is requested, shipments to plants in this market, for the purpose described above in this subparagraph, shall include all deliveries of milk by the cooperative association and by its producer-members in the manner described in such subdivision (vi).

(i) Any plant qualifying as a pool plant pursuant to this subparagraph, other than a plant which retains automatic pool plant status for the month under subdivision (ii) or (iii) of this subparagraph, shall be a nonpool plant in any month of December through June in which it retains automatic pool plant status under another New England Federal order.

(vi) Subject to subdivisions (ii), (iii), and (iv) of this subparagraph, that receiving plant operated by an association of producers (which shall be the plant closest to Hartford, Connecticut, if more than one plant is operated by such association) shall be a pool plant in any month in which the total quantity of milk shipped therefrom to a pool plant qualified pursuant to subparagraph (1) of this paragraph, to a producer-handler

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

or to a regulated plant other than a pool plant, plus the total quantity of milk received directly from farms at pool plants qualified pursuant to subparagraph (1) of this paragraph from producers who are members of such association, is at least 50 percent of the milk delivered by dairy farmer-members of such association to all pool plants and to the receiving plant for which pooling qualification pursuant to this subdivision is requested in writing on or before the 15th day of such month: *Provided*, That a receiving plant which has pooling status under this subdivision may be a nonpool plant for the month if the operating association submits, on or before the 15th day of the month to which nonpool status is to apply, a written request to the market administrator to withdraw such plant from pool plant status, and, if so withdrawn, such plant may not requalify under this subdivision prior to the next following July: *And provided further*, That qualification for pooling under this subdivision shall not affect in any way the requirements of subdivision (v) of this subparagraph for unit pooling.

(d) "Regulated plant" means (1) any pool plant, or (2) any other plant (except the plant of a producer-handler under any Federal order) with route disposition in the marketing area in the month of not less than 10 percent of its total receipts of fluid milk products and with total Class I disposition in the month or in either of the two preceding months of at least 50 percent of its total receipts of fluid milk products in the corresponding month, unless the market administrator determines that such plant disposed of a greater proportion of its Class I milk in another marketing area on routes.

2. In § 1015.22(c), subparagraph (2) is revised as follows:

§ 1015.22 Transfers and diversions of fluid milk products.

(a) * * *

(2) In Class II milk to the extent it is not assigned to Class I-B (i) if diverted or transferred in bulk, or (ii) if transferred as a packaged fluid milk product containing at least 3 percent butterfat, to a pool plant as defined in Federal Order No. 2 or to any plant from which a greater aggregate quantity of fluid milk products is disposed of on routes in the New York-New Jersey marketing area under Order No. 2 than is disposed of in the Connecticut marketing area: *Provided*, That such skim milk or butterfat so transferred or diverted shall be classified as Class I milk to the extent that it is assigned to Class I-A under Federal Order No. 2 and not subject to charges specified in § 1002.83 of such order.

3. In § 1015.41(a) the word "continental" in subparagraph (2) is changed to "the" and subparagraph (1) is revised as follows:

No. 126—8

§ 1015.41 Computation of New England basic Class I price.

(a) * * *

(1) Divide by 1.0025 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1957-59 as the base period.

[F.R. Doc. 62-6345; Filed, June 28, 1962; 8:56 a.m.]

[7 CFR Part 1002]

MILK IN NEW YORK-NEW JERSEY MARKETING AREA

Termination of Proceeding to Terminate Certain Provisions of the Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), notice was issued by the Secretary of Agriculture on May 24, 1962, that termination of certain provisions of the order regulating the handling of milk in the New York-New Jersey marketing area was being considered.

The provisions proposed to be terminated were §§ 1002.15 (b) (2), (3), (4), (5), and (c) (1), (2), (3), (4), and in (c) proper the words "under conditions set forth in subparagraphs (1) and (2) of this paragraph or, except as specified in subparagraphs (3) and (4) of this paragraph." Such provisions relate to the basis on which handlers may be designated as "producer-handlers" and consequently be exempt from the pricing and pooling provisions of the order.

Interested persons were invited to submit to the Department not later than June 13, 1962, written data, views or arguments in connection with the proposed termination.

A substantial number of responses to this invitation were received by the Department. Careful review of the views, data and arguments received has been made. A large majority of those submitting views strongly urged that the proposed termination action not be taken, and that the present relationship under the order of producer-handler milk to the pricing and pooling of milk of other producers be reviewed in a public hearing.

It is concluded that a public hearing will provide the most satisfactory basis for determining whether the order provisions as they relate to producer-handler operations should be changed.

It is found and determined, therefore, that no further action should be taken to terminate order provisions relating to requirements for producer-handler status under the order, and the proceeding begun on May 24 is hereby ended.

Signed at Washington, D.C., on June 25, 1962.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 62-6339; Filed, June 28, 1962; 8:54 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 601]

[Airspace Docket No. 62-CE-17]

CONTROL ZONE

Proposed Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency (FAA) is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a control zone within a 5-mile radius of the Rock County Airport, Janesville, Wis. (latitude 42°37'12" N., longitude 89°02'25" W.) from 0600 to 2400 hours, local time, daily. This would provide protection for aircraft executing prescribed instrument approach and departure procedures at the Rock County Airport. The time of designation would coincide with the hours of operation of the aviation weather reporting service provided by North Central Airlines. Communications would be provided within the proposed control zone by the Rockford, Wis., Tower and the Rockford Flight Service Station.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A-103, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on June 22, 1962.

CLIFFORD P. BURTON,
Chief, Airspace Utilization Division.

[F.R. Doc. 62-6304; Filed, June 28, 1962; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 11]

[Docket No. 14690; FCC 62-669]

REVISION OF FORMS FOR NONCOMMERCIAL EDUCATIONAL TV AND FM STATIONS OPERATING ON RESERVED CHANNELS

Notice of Proposed Rule Making

1. Notice is hereby given of rule making in the above-entitled matter, relating to changes in the forms to be filed by applicants for, and permittees and licensees of, noncommercial educational TV and FM stations operating on reserved channels.

2. At present, noncommercial educational TV applicants and stations use the same forms as commercial TV stations—FCC Form 301 for construction permit application, FCC Form 302, application for license to cover CP, FCC Form 303, application for renewal of license, and FCC Form 323, the ownership report. Noncommercial educational FM licensees, operating on the 20 FM channels reserved for educational use, file the same ownership report, but in other respects use a much simpler set of forms, FCC Form 340 for construction permit, FCC Form 341 for license to cover, and FCC Form 342 for renewal.

3. There appears to be no significant reason for differing procedures in the two services; therefore the same forms, it appears, should apply to both. Moreover, the present ownership report (Form 323), and the 301 and other forms used in television, were in the main designed to apply to the more numerous commercial stations. Use thereof in the noncommercial educational area is sometimes confusing to those using the forms, and not always productive of the information needed by the Commission concerning noncommercial educational operations. There is need for forms more specifically tailored to educational operations. On the other hand, the Form 340 and other forms used in the educational FM service are in some respects too brief to secure desired information.

4. Therefore, we propose to change the forms applicable to noncommercial educational TV and FM stations operating on channels reserved for such use (i.e., in television, channels reserved in § 3.606 for educational use, and in FM, channels 201 to 220). All such applicants and stations would use new Forms 340, 341, 342, and 323E. Copies of these forms, as proposed to be revised, are attached hereto.¹ In the case of FM stations, preparation of the proposed form may involve slightly more effort than the present 340, etc.; but it is not believed that the work involved will be unduly burdensome. The information to be supplied is needed for the proper handling of the Commission's business and discharge of its obligations.

5. It should be noted that, except in the case of educational FM stations in

Alaska, these forms would be used only in connection with operations on channels reserved for education. In both TV and FM there are stations of a noncommercial educational character operating on unreserved channels; these would continue to file Forms 301, 302, 303, and 323, just as commercial stations do. In Alaska, where (because the lower portion of the FM band is not available for broadcast use) noncommercial educational stations may be assigned to any available FM channel, such stations would file the new educational forms, 340, etc.

6. Use of the new forms, as proposed, would involve changes in certain of our Rules relating to forms. The text of these proposed changes is set forth below as Appendix A. Appendices B, C, D, and E hereto are the proposed Forms 340, 341, 342, and 323E, respectively.¹

7. Comments are invited on: (1) Use of the same form for both television and FM noncommercial educational stations on reserved channels; and (2) the specific contents of the proposed forms. Authority for the adoption of the forms and changes in the rules is contained in sections 4(i), 303(r), 308 (b), and 319(a) of the Communications Act of 1934, as amended.

8. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested persons may file comments on or before August 1, 1962, and reply comments on or before August 16, 1962. In reaching its decision herein, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

9. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished to the Commission.

Adopted: June 20, 1962.

Released: June 26, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

APPENDIX A

1. Section 1.322(a) (5) is amended to read as follows:

§ 1.322 Application forms for authority to construct a new station or make changes in an existing station.

(a) * * *
(5) FCC Form 340 "Application for Authority to Construct or Make Changes in a Noncommercial Educational FM or TV Broadcast Station on a Reserved Channel."

2. Section 1.325(a) (5) is amended to read as follows:

§ 1.325 Application for license to cover construction permit.

(a) * * *
(5) FCC Form 341 "Application for Noncommercial Educational FM or TV Broadcast Station License to Operate on a Reserved Channel."

3. Section 1.326(b) is amended to read as follows:

§ 1.326 Application for license to use former main transmitter or antenna as auxiliary.

(b) FCC Form 341 "Application for Noncommercial Educational FM or TV Station License to Operate on a Reserved Channel."

4. Section 1.328(c) (5) is amended to read as follows:

§ 1.328 Application for renewal of license.

(c) * * *
(5) FCC Form 342 "Application for Renewal of Noncommercial Educational FM or TV Broadcast Station License to Operate on a Reserved Channel."

5. In § 1.343, the preliminary text of paragraph (a) is amended to read as follows, and new paragraph (e) is added, as follows:

§ 1.343 Ownership reports.

(a) Each licensee of a standard, FM, or television station (as defined in Part 3 of this chapter), other than noncommercial educational television or FM stations operating on channels reserved for educational use under Part 3 of this chapter, shall file an Ownership Report (FCC Form 323) at the time the application for renewal of station license is required to be filed: *Provided, however*, That licensees owning more than one standard, FM, or television broadcast station need file only one Ownership Report at three-year intervals. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

(e) The provisions of this paragraph apply to all licensees and permittees of noncommercial educational FM and TV stations operating on channels reserved for educational use under the provisions of §§ 3.501 and 3.606 of this chapter.

(1) Each licensee covered by this paragraph shall file an Ownership Report (FCC Form 323E): *Provided, however*, That licensees owning more than one noncommercial educational FM or television broadcast station need file only one Ownership Report at three-year intervals. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

(i) The following information as to all officers, members of governing board, and holders of 1 percent or more ownership interest (if any): Name, residence, office held, citizenship, principal profession or occupation, and by whom appointed.

(ii) Full information on FCC Form 323E with respect to the interest and identity of any individual, organization, corporation, association, or any other entity which has direct or indirect control over the licensee or permittee.

¹ Appendices B-E filed as part of original document.

(iii) A list of all contracts still in effect required by § 1.342 to be filed with the Commission, showing the date of execution and expiration of each contract.

(iv) Any interest in any other broadcast station of the licensee or permittee, or any of its officers, members of the governing board, and holders of 1 percent or more ownership interest (if any).

(2) A permittee shall file an Ownership Report (FCC Form 323E) within 30 days of the date of grant by the Commission of an application for original construction permit. The Ownership Report of the permittee shall give the information required by the applicable portions of this paragraph.

(3) A supplemental Ownership Report (FCC Form 323E) shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report should include, without limitation:

- (i) Any change in organization;
- (ii) Any change in officers or directors;
- (iii) Any transaction affecting the ownership (direct or indirect) or voting rights with respect to the licensee or permittee (or with respect to any stock interest therein).

[F.R. Doc. 62-6329; Filed, June 28, 1962;
8:52 a.m.]

Notices

FEDERAL POWER COMMISSION

[Docket Nos. G-11980, G-17166]

TENNESSEE GAS TRANSMISSION CO.

Order Consolidating Proceedings

JUNE 22, 1962.

On May 28, 1962, the presiding examiner issued an initial decision in Docket No. G-19983 concerning the cost of service issues in that proceeding, leaving for future determination all rate design issues. No final decision thereon has yet been issued. In his decision, the examiner directed that a conference be held commencing on June 27, 1962, to explore the possibilities for settlement of the issues in all three pending Tennessee rate proceedings including those captioned above.

The issues involved in those dockets are related and discussions concerning the possibility of settlement of issues is appropriate. We are of the further view that the above captioned dockets should be consolidated for purposes of hearing and in the event the conference herein referred to is not productive of a settlement such consolidated hearing should be convened as expeditiously as possible.

The Commission orders. The matters involved in Tennessee Gas Transmission Company, Docket Nos. G-11980 and G-17166 are hereby consolidated for the purposes of hearing and decision.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 62-6307; Filed, June 28, 1962;
8:47 a.m.]

[Docket No. CP62-272]

EASTERN SHORE NATURAL GAS CO.

Notice of Application and Date of Hearing

JUNE 22, 1962.

Take notice that on May 22, 1962, Eastern Shore Natural Gas Company (Applicant), 120 East Main Street, Salisbury, Maryland, filed in Docket No. CP62-272 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a lateral line and metering facilities to initiate a direct sale on an interruptible basis to H. P. Cannon and Son, Inc., authorizing a new delivery point for the sale of gas to the Sussex Gas Company (Sussex), and authorizing an increase in the contract demand service to Delaware Power and Light Company (DP&L), all as more fully set forth in the application which

is on file with the Commission and open to public inspection.

Applicant proposes to tap its existing transmission line near Bridgeville, Delaware, and to construct and operate 6,700 feet of 6-inch lateral line and metering facilities to supply additional volumes of gas to Applicant's existing customer, Sussex, and to initiate a direct interruptible sale of gas to H. P. Cannon and Son, Inc. The application states that Sussex will take an additional volume of 10,000 Mcf per year to supply additional heating customers in Bridgeville, Delaware, and to supply one interruptible industrial customer which will use gas largely during the summer months for food processing and freezing. The additional gas will be sold to Sussex under its existing service agreement which provides for the sale of gas under Applicant's G-1 Rate Schedule. H. P. Cannon and Son, Inc., will require approximately 42,000 Mcf of gas annually to cook and can various types of food.

Applicant further proposes to increase its firm sales to Delaware Power and Light Company under the G-1 Rate Schedule from 50 Mcf per day to 100 Mcf per day. DP&L requires the additional gas in order to supply the increased requirements of Globe Union Battery Company of Middletown, Delaware, for use in its industrial processing operations. The application states that Applicant will be able to supply the additional requirements from its present gas supply.

Applicant estimates that the tap, lateral, and metering facilities will cost \$33,500, to be financed from funds on hand.

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 July 26, 1962, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, at 441 G St., 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 July 16, 1962. 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.

GORDON M. GRANT,
Acting Secretary.

[F.R. Doc. 62-6308; Filed, June 28, 1962;
8:47 a.m.]

[Docket Nos. RI62-485-RI62-507]

PHILLIPS PETROLEUM CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates¹

JUNE 20, 1962.

Phillips Petroleum Company, Docket No. RI62-485; Texaco, Inc., Docket No. RI62-486; W. S. Kilroy (Operator), et al., Docket No. RI62-487; Humble Oil & Refining Company, Docket No. RI62-488; The Atlantic Refining Company, Docket No. RI62-489; United Producing Company, Inc., Docket No. RI62-490; Kerr-McGee Oil Industries, Inc., Docket No. RI62-491; Sinclair Oil & Gas Company, Docket No. RI62-492; National Cooperative Refinery Association, Docket No. RI62-493; Midwest Oil Corporation, Docket No. RI62-494; Champlin Oil and Refining Company, Docket No. RI62-495; Monsanto Chemical Company, Docket No. RI62-496; The Superior Oil Company, Docket No. RI62-497; Shell Oil Company (Operator), et al., Docket No. RI62-498; Socony Mobil Oil Company, Inc., Docket No. RI62-499; Pan American Petroleum Corporation, Docket No. RI62-500; Keating-Parker Drilling Company (Agent) (Operator), et al., Docket No. RI62-501; Sunray DX Oil Company (Formerly Sunray Mid-Continent Oil Company), Docket No. RI62-502; Oklahoma Natural Gas Company, Docket No. RI62-503; Shell Oil Company, Docket No. RI62-504; Amerada Petroleum Corporation (Operator), et al., RI62-505; Delh-Taylor Oil Corporation, Docket No. RI62-506; Sohio Petroleum Company, Docket No. RI62-507.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

¹ This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date ¹ unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI62-485...	Phillips Petroleum Co., Bartlesville, Okla.	352	1	Coastal Transmission Corp. (East Corpus Christi Bay Field, Nueces County, Tex.) (R.R. District No. 4).	\$4,753	5-28-62	7-1-62	12-1-62	2 3 4 16.5	3 4 5 17.5	-----
		361	2	Northern Natural Gas Co. (Harper County, Okla.).	402	5-28-62	7-1-62	12-1-62	2 6 16.425	5 7 17.520	-----
RI62-486...	Texaco Inc., P.O. Box 2332, Houston 1, Tex.	281	3	Coastal Transmission Corp. (South Clara Driscoll Field, Nueces County, Tex.) (R.R. District No. 4).	1,080	5-28-62	7-1-62	12-1-62	2 4 16.5	4 5 17.5	-----
		279	3	Coastal Transmission Corp. (East Mustang Island Field, Nueces County, Tex.) (R.R. District No. 4).	6,329	5-28-62	7-1-62	12-1-62	2 3 4 16.5	3 4 5 17.5	-----
		9	17	Northern Natural Gas Co. (West Panhandle Field Carson County, Tex.) (R.R. District No. 10).	106	5-25-62	7-1-62	12-1-62	2 11 7.168	8 11 8.067	RI62-229
		164	5	Panhandle Eastern Pipe Line Co. (NE. Greenough Field, Beaver County Okla., and Singley-Sanders Field, Meade County, Kans.).	1,850	5-24-62	7-1-62	12-1-62	2 16.0	5 17.0	-----
RI62-487...	W. S. Kilroy (Operator), et al., c/o Kilroy Co. of Texas, Inc., 1908 First City National Bank Bldg., Houston 2, Tex.	1	3	Coastal Transmission Corp. (Palacios Field, Matagorda County, Tex.) (R.R. District No. 3).	17,109	5-24-62	7-1-62	12-1-62	2 3 4 17.5	3 4 5 18.5	-----
RI62-488...	Humble Oil & Refining Co., P.O. Box 2180, Houston 1, Tex.	217	1	Northern Natural Gas Co. (Hugoton Field, Edwards County, Kans.).	1,715	5-21-62	7-1-62	12-1-62	2 9 13.5	5 9 14.5	-----
RI62-488...	do	221	2	Northern Natural Gas Co. (Beaver County, Okla.).	995	5-21-62	7-1-62	12-1-62	2 10 16.5	5 10 17.5	RI61-92
RI62-489...	The Atlantic Refining Co., P.O. Box 2819, Dallas 21, Tex.	196	1	Northern Natural Gas Co. (South Glenwood Field, Beaver County, Okla.).	426	5-21-62	7-1-62	12-1-62	2 11 15.0	5 11 16.0	-----
RI62-490...	United Producing Co., Inc., P.O. Box 1503, Houston 1, Tex.	29	4	do	1,776	5-21-62	7-1-62	12-1-62	2 12 16.71	5 12 17.82	-----
RI62-491...	Kerr-McGee Oil Industries, Inc., Kerr-McGee Bldg., Oklahoma City 2, Okla.	54	4	do	789	5-21-62	7-1-62	12-1-62	2 12 16.530	5 12 17.632	-----
RI62-492...	Sinclair Oil & Gas Co., P.O. Box 521, Tulsa 2, Okla.	141	2	Panhandle Eastern Pipe Line Co. (Stevens Field, Meade County, Kans.).	342	5-22-62	6-28-62	11-28-62	2 15.0	5 16.0	-----
		157	4	Northern Natural Gas Co. (Rosston-Madison Field, Beaver County, Okla.).	976	5-22-62	7-1-62	12-1-62	2 12 16.77	5 12 17.89	-----
RI62-493...	National Cooperative Refinery Association, 305 Rule Bldg., Wichita, Kans.	2	4	Cities Service Gas Co. (NW. Sharon, Stumph, NE. Rhodes, Hardtner, and Donald Fields, Barber County, Kans.).	12,000	5-21-62	6-21-62	11-21-62	2 9 12.0	5 9 13.0	-----
RI6-494...	Midwest Oil Corp., 1700 Broadway, Denver 2, Colo.	18	3	Northern Natural Gas Co. (NE. Gate Field, Harper County, Okla.).	63	5-24-62	7-1-62	12-1-62	2 14 16.5	5 15 17.6	-----
RI62-495...	Champlin Oil & Refining Co., P.O. Box 9365, Fort Worth 7, Tex.	43	6	Northern Natural Gas Co. (Hugoton Field, Texas County, Okla.).	117	5-25-62	7-1-62	12-1-62	2 12.0	5 13.0	-----
RI62-496...	Monsanto Chemical Co., 1401 South Coast Bldg., Houston 2, Tex.	27	1	Northern Natural Gas Co. (Fingham Field, Beaver County, Okla.).	2,049	5-25-62	7-1-62	12-1-62	2 6 16.36	5 7 17.46	-----
RI62-497...	The Superior Oil Co., 909 RCA Bldg., 1725 K Street N.W., Washington 6, D.C.	76	2	Colorado Interstate Gas Co. (Mocane Field, Beaver County, Okla.).	4,676	5-25-62	6-25-62	11-25-62	2 16 16.667	5 17 19.057	-----
RI62-498...	Shell Oil Co. (Operator), et al., 50 West 50th Street, New York 20, N.Y.	164	6	Northern Natural Gas Co. (Rosston Field, Beaver County, Okla.).	7,104	5-28-62	7-1-62	12-1-62	2 6 16.71	5 7 17.82	-----
RI62-499...	Socony Mobil Oil Co., Inc., 150 East 42d Street, New York 17, N.Y.	189	3	Northern Natural Gas Co. (South Glenwood Field, Beaver County, Okla.).	8	5-28-62	7-1-62	12-1-62	2 6 16.320	5 7 17.408	-----
		128	1	Northern Natural Gas Co. (NE. Gate Field, Harper County, Okla.).	215	5-28-62	7-1-62	12-1-62	2 6 16.425	5 7 17.520	-----
RI62-500...	Pan American Petroleum Corp., P.O. Box 591, Tulsa 2, Okla.	221	4	Panhandle Eastern Pipe Line Co. (Enns-Carrick Field, Texas County, Okla.).	1,334	5-28-62	7-1-62	12-1-62	2 16.6	5 16.8	RI62-2
RI62-501...	Keating-Parker Drilling Co. (Agent) (Operator), et al., c/o John L. Arrington, Jr., Lupardus, Holliman & Huffman, 510 Oklahoma Natural Bldg., Tulsa 19, Okla.	6	1	Northern Natural Gas Co. (NE. Gate Field, Harper County, Okla.).	255	5-28-62	7-1-62	12-1-62	2 6 16.440	5 7 17.536	-----
RI62-502...	Sunray DX Oil Co. (Formerly Sunray Mid-Continent Oil Co.), P.O. Box 2039 Tulsa 2, Okla.	138	5	Colorado Interstate Gas Co. (Laverne Field, Harper County, Okla.).	45,686	5-28-62	6-30-62	11-30-62	2 6 16.82	5 7 17.94	-----
RI62-503...	Oklahoma Natural Gas Co., c/o John L. Arrington, Jr., Lupardus, Holliman & Huffman, 510 Oklahoma Natural Bldg., Tulsa 19, Okla.	5	1	Northern Natural Gas Co. (South Glenwood Field, Beaver County, Okla.).	2,585	5-28-62	7-1-62	12-1-62	2 16.995	5 17 18.128	-----
				do					2 16.275	5 17 17.860	-----
				do					2 16.20	5 17 17.28	-----

See footnotes at end of table.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in Docket Nos.
									Rate in effect	Proposed increased rate	
RI62-504...	Shell Oil Co., 50 West 50th Street, New York 20, N.Y.	163	8	Northern Natural Gas Co. (Buffalo Field, Harper County, Okla.).	\$25,200	5-28-62	7-1-62	12-1-62	² 16.40	⁶ 17.49	-----
		190	6	do.	24,272	5-28-62	7-1-62	12-1-62	² 15.0	⁶ 16.0	-----
		229	1	Coastal Transmission Corp. (Mystic Bayou Field, St. Martin Parish, La.).	3,285	5-28-62	7-1-62	12-1-62	²⁴ 19.75	⁶ 23.55	-----
		232	2	Coastal Transmission Corp. (White Castle Field, Iberville Parish, La.).	1,186	5-28-62	7-1-62	12-1-62	²⁴ 19.75	⁶ 20.75	-----
RI62-505...	Amerada Petroleum Corp. (Operator), et al., P.O. Box 2040, Tulsa 2, Okla.	86	2	Coastal Transmission Corp. (Napoleonville Field, Assumption Parish, La.).	2,166	5-24-62	7-1-62	12-1-62	²⁴ 19.75	⁶ 20.75	-----
				Coastal Transmission Corp. (Port Allen Field, West Baton Rouge Parish, La.).							-----
RI62-506...	Delhi-Taylor Oil Corp., Fidelity Union Tower, Dallas 1, Tex.	24	1	Coastal Transmission Corp. (Bay Natchez Field, Iberville Parish La.).	7,600	5-29-62	7-1-62	12-1-62	²⁴ 19.75	⁶ 23.55	-----
RI62-507...	Sohio Petroleum Co., 970 First National Annex, Oklahoma City, Okla.	49	4	Coastal Transmission Corp. (Gross Tete Field, Baton Rouge Parish, La.).	4,379	5-31-62	7-1-62	12-1-62	²⁴ 19.75	⁶ 20.75	-----

¹ The stated effective date is the first day after expiration of the required statutory notice or, if later, the date requested by respondent.

² Pressure base is 14.65 psia.

³ Subject to determination of initial rates in Docket Nos. G-18338, et al.

⁴ Subject to downward Btu adjustment below 1,000 Btu's per cubic foot.

⁵ Periodic increase.

⁶ Includes base rate of 15.0 cents per Mcf plus Btu adjustment.

⁷ Includes base rate of 16.0 cents per Mcf plus Btu adjustment.

⁸ Redetermined increase.

⁹ Subject to downward Btu adjustment.

¹⁰ Includes 1.0 cent per Mcf for liquids.

¹¹ Subject to upward and downward Btu adjustments.

¹² Includes base rate of 15.0 cents per Mcf plus Btu adjustment.

¹³ Includes base rate of 16.0 cents per Mcf plus Btu adjustment.

¹⁴ Includes base rate of 15.0 cents per Mcf plus Btu adjustment for gas containing 1,100 Btu's per cubic foot.

¹⁵ Includes base rate of 16.0 cents per Mcf plus Btu adjustment for gas containing 1,100 Btu's per cubic foot.

¹⁶ Includes base rate of 15.0 cents per Mcf plus Btu adjustment for gas containing 1,111 Btu's per cubic foot.

¹⁷ Renegotiated increase.

¹⁸ Includes base rate of 17.0 cents per Mcf plus Btu adjustment for gas containing 1,121 Btu's per cubic foot.

¹⁹ Lewis Unit.

²⁰ Lone Unit.

²¹ Berends Unit.

²² Increase not applicable to acreage included in Supplement Nos. 5 and 6 to Rate Schedule No. 163.

²³ Increase applicable to acreage included in Supplement Nos. 5 and 6 to Rate Schedule No. 163, for which Btu adjustment is not applicable.

²⁴ Rate base is 15.025 psia.

The proposed increased rates exceed the applicable area price levels set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Ch. I, § 2.56).

The proposed changes in rates and changes may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention 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 and 1.37 (f)) on or before August 6, 1962.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 62-6214; Filed, June 28, 1962;
8:45 a.m.]

DEPARTMENT OF THE INTERIOR

National Park Service

[Order 3, Amdt. 10]

ASSISTANT REGIONAL DIRECTOR

Delegation of Authority Regarding Execution and Approval of Contracts for Construction, Supplies, Equipment or Services

Section 4 shall read:

SEC. 4. *Assistant Regional Directors.* The Assistant Regional Directors may execute and approve contracts not in excess of \$200,000 for construction, supplies, equipment and services. This authority may be exercised by the Assistant Regional Directors in behalf of any office or area for which the Region One Office serves as the field finance office.

Section 5 shall be deleted.

Section 6 shall read:

SEC. 6. *Regional Chief, Division of Property Management and General Services.* The Regional Chief, Division of Property Management and General Services may execute and approve contracts not in excess of \$50,000 for construction, supplies, equipment and serv-

ices. This authority may be exercised by the Regional Chief, Division of Property Management and General Services in behalf of any area or office for which the Region One Office serves as the field finance office.

Sections 6, 7, 8, 9, and 10 are hereby renumbered 5, 6, 7, 8, and 9.

(National Park Service Order No. 14 (19 F.R. 8824); 39 Stat. 535; 16 U.S.C., 1962 ed., sec. 2, Region One Order No. 3 (21 F.R. 1493))

ELBERT COX,
Regional Director,
Region 1 Office, Richmond, Va.

[F.R. Doc. 62-6314; Filed, June 28, 1962;
8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

FRESH PEACHES

Notice of Purchase Program DMP 49a

In order to encourage the domestic consumption of peaches by diverting them from the normal channels of trade and commerce in accordance with section 32, Public Law 320, 74th Congress, approved August 24, 1935, as amended, a fresh peach purchase program was made effective on June 19, 1962, in the States of Georgia, North Carolina, and South Carolina, and on June 22, 1962, in Alabama. Purchases will be made on an announced price basis as a surplus removal activity. Peaches purchased under the program will be distributed to eligible institutions. Details regarding price, container, and other program specifications are contained in purchase announcements issued by the Agricultural Stabilization and Conservation (ASC) Committees in these States.

Quantities purchased will depend upon marketing conditions at the time of purchase, and availability of outlets for use of the peaches without waste. Information concerning this purchase program may be obtained from the Fruit and Vegetable Division, Agricultural Marketing Service, Department of Agriculture, Washington 25, D.C.

(Sec. 32, 49 Stat. 774, as amended, 7 U.S.C. 612c)

Dated: June 26, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and
Vegetable Division, Agricultural
Marketing Service.

[F.R. Doc. 62-6337; Filed, June 28, 1962;
8:54 a.m.]

Commodity Credit Corporation 1962 CROP PRICE SUPPORT LOAN PROGRAMS

Announcement of Interest Rate

Commodity Credit Corporation announces that 1962 crop year price support loans for all commodities shall bear interest at the per annum rate of 3½ percent from the date of disbursement of the loan, except that where there has been a willful misrepresentation in obtaining the loan, such loan shall bear interest at the per annum rate of 6 percent from the date of disbursement thereof.

Signed at Washington, D.C., on June 26, 1962.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 62-6344; Filed, June 28, 1962;
8:55 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 12319 etc.; Order E-18502]

SOUTHERN AIRWAYS, INC.

Renewal Case; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of June 1962.

By application filed on April 13, 1961 (Docket 12319), pursuant to section 401 of the Federal Aviation Act of 1958, as amended, Southern Airways, Inc. (Southern) requests amendment of its certificate of public convenience and necessity for route 98 so as to renew for an indefinite period its existing temporary authority to engage in air transportation with respect to persons, property and mail between Atlanta, Ga., and New Orleans, La., via the intermediate points Columbus, Ga., Dothan, Ala., Panama City, Fla., and Eglin Air Force Base, Fla., over segment 5.

In the Panama City, Fla.-Atlanta Investigation, Docket 7233, the Board, by Order E-10332, May 29, 1956, certificated Southern between Atlanta and Panama City via Columbus and Dothan. In the Southeastern Area Local Service Case, Docket 7038, et al., the Board, by Order E-14754, December 18, 1959, extended

Southern from Panama City to New Orleans via Eglin Air Force Base, and suspended Eastern Air Lines between Dothan and Atlanta.

Upon consideration of the data available to the Board from regularly filed carrier reports, reflected in part in the attached Appendices A through E,¹ which are hereby incorporated into the record, the Board finds that Southern's service has developed the market, especially in view of the fact that the carrier provides five daily round trips over this segment serving Atlanta, the principal community of interest point for the intermediate points on this segment (Appendix C).

In addition, the volume of service provided with both DC-3 and Martin 404 equipment has developed substantial volumes of traffic at all of the intermediate points, ranging upwards from 19 originating passengers daily (Appendix B). The carrier's service has generated 11.7 passengers per mile for the calendar year 1961—substantially in excess of the Board's standard of seven passengers per mile as envisaged in the "use it or lose it" policy (Appendix A).

Further, Southern's subsidy need for its operations over this segment is relatively minimal, in light of the breakeven need of \$1.80 per passenger (Appendix E), compared to the system cost of \$11.98 per passenger and the average fare of \$14.66 per passenger for the year ended June 30, 1961.

As shown in attached Appendix C, the majority of traffic from these intermediate points is destined to points beyond Atlanta and New Orleans, and Appendix D shows some of the connections with trunkline carriers that are provided by Southern in its schedules for the major destinations beyond.

Consequently, in view of the foregoing, and pursuant to section 401(g) of the Federal Aviation Act of 1958, as amended, the Board tentatively finds that the public convenience and necessity require that Southern's present authority for segment 5 should be renewed for an indefinite period and that its certificate of public convenience and necessity should be so amended.

On February 26, 1960, Southern filed a certificate amendment application in Docket 11166 requesting authority to operate between Panama City and Memphis via the intermediate points Montgomery and Birmingham. The City of Panama City, Fla., filed, on February 19, 1960, a request for certificated air service between these same points (Docket 11151). Since, in large measure, the traffic generated to and from Panama City will have a substantial effect on the need for service over this proposed routing, and since the Board will consider service to Panama City in this proceeding, we believe that these two dockets should be consolidated herein.

Accordingly, it is ordered,

1. That all interested persons are directed to show cause why the Board should not issue an order making final the findings and conclusions stated herein and issue to Southern an amended certificate making indefinite its author-

¹ Filed as part of original document.

ity to provide service between Atlanta and New Orleans via Columbus, Dothan, Panama City and Eglin Air Force Base over segment 5 of route 98;

2. That any interested person having objection to the issuance of an order making final the findings and conclusions stated herein, and to the issuance of an amended certificate making indefinite Southern's authority to provide service over segment 5 of route 98, shall, within 15 days from the service date hereof, file written notice of objection with the Board;

3. That on the expiration of the 15-day period allowed for the filing of objections, this proceeding shall be set for hearing before an examiner of this Board limited to consideration of issues raised by the objections filed and to the issues contained in Dockets 11151 and 11166, hereinafter consolidated;

4. That in the event there are no objections with respect to the indefinite continuation of segment 5, all further procedural steps will be deemed to have been waived as to this issue, and that matter will be submitted for final action;

5. That Dockets 11151 and 11166 be and hereby are consolidated into this proceeding for hearing and decision;

6. That a copy of this order shall be served on Southern Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., United Air Lines, Inc., National Airlines, Inc., the Cities of Atlanta and Columbus, Ga., Dothan, Birmingham, and Montgomery, Ala., Panama City, Fla., New Orleans, La., Memphis, Tenn., The Department of Defense, and the Aviation Commissions of the States of Alabama, Louisiana, Florida, and Tennessee, who are hereby made parties to this proceeding;

7. That all motions to consolidate and requests to expand or change the issues herein shall be filed within the 15-day period allowed for the filing of objections, and no further such motions or requests, or petitions for reconsideration of this order, will be entertained; and

8. That a copy of this order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 62-6335; Filed, June 28, 1962;
8:53 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-185]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Order of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to July 31, 1963, the latest completion date specified in Construction Permit No. CPRR-62 for the construction of the National Aeronautics and Space Administration's Mock-Up Reactor (MUR) to be located on the grounds of the Plum Brook Station situated ap-

proximately three miles south southeast of Sandusky, Ohio.

Copies of the Commission's order and of the application by National Aeronautics and Space Administration are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 19th day of June 1962.

For the Atomic Energy Commission.

SAUL LEVINE,
Chief, Test and Power Reactor
Safety Branch, Division of
Licensing and Regulation.

[F.R. Doc. 62-6303; Filed, June 28, 1962;
8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 14662; FCC 62M-883]

DOVER BROADCASTING CO.

Order Continuing Hearing

In the matter of revocation of licenses of the Dover Broadcasting Company for Standard Broadcast Station WDOV and FM Broadcast Station WDOV-FM Dover, Delaware; Docket No. 14662.

The Hearing Examiner having under consideration a "Petition for Rescheduling of Prehearing and Hearing Dates" filed by Dover Broadcasting Company on June 13, 1962, requesting that the prehearing conference presently scheduled for July 10, 1962, at 9:00 a.m., in the offices of the Commission, Washington, D.C., be continued to September 10, 1962 at 9:00 a.m., and that the date for the hearing presently scheduled for July 27, 1962, at Dover, Delaware be continued to a date to be set at the prehearing conference;

It appearing that counsel for Dover Broadcasting Company will be absent from the country during the period from July 1, 1962, through August 4, 1962; and

It further appearing that good cause has been shown for a grant of the requested relief; and

It further appearing that the Broadcast Bureau, the only other party, has interposed no objection to the requested continuance;

It is ordered, This 22d day of June 1962, that the "Petition for Rescheduling of Prehearing and Hearing Dates" filed on June 13, 1962, by Dover Broadcasting Company, be, and the same is, hereby granted, and that the prehearing conference in this proceeding presently scheduled for July 10, 1962, at 9:00 a.m., be, and the same is, hereby continued to September 10, 1962, at 9:00 a.m., in the offices of the Commission, Washington, D.C., and that the hearing presently scheduled for July 27, 1962, at Dover, Delaware, be, and the same is,

hereby continued to a date to be set at the prehearing conference.

Released: June 25, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-6330; Filed, June 28, 1962;
8:52 a.m.]

[Docket No. 14583; FCC 62M-885]

FIFTH MARKET BROADCASTING CO., INC. (WGSM)

Order Continuing Proceedings

In re application of Fifth Market Broadcasting Co., Inc. (WGSM), Huntington, New York, Docket No. 14583; File No. BP-14332; for construction permit.

The Hearing Examiner having under consideration the "Petition for Continuance" filed by Fifth Market Broadcasting Co., Inc., on June 13, 1962, requesting that the presently scheduled dates for further proceedings in the above-entitled matter be continued;

It appearing that because of the amount of work involved in preparation of the exhibits, the scheduled dates cannot be met and that the hearing set for June 27, 1962, must be continued; and

It further appearing that the Broadcast Bureau, the only other party to the proceeding, has informally consented to a continuance, and that good cause has been shown therefor;

It is ordered, This 22d day of June 1962, that the "Petition for Continuance" filed by Fifth Market Broadcasting Co., Inc., be, and the same is, hereby granted, and that the presently scheduled date of June 13, 1962, for the exchange of exhibits is hereby continued to June 29, 1962; and

It is further ordered, That the scheduled date of June 27, 1962, for the hearing is hereby continued to July 18, 1962.

Released: June 25, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-6331; Filed, June 28, 1962;
8:52 a.m.]

[Docket Nos. 14639, 14640; FCC 62M-882]

OLNEY BROADCASTING CO. AND JAMES R. WILLIAMS

Order Continuing Hearing

In re applications of Harwell V. Shepard tr/as Olney Broadcasting Company, Olney, Texas, Docket No. 14639, File No. BP-10494; and James R. Williams, Anadarko, Oklahoma, Docket No. 14640, File No. BP-13635; for construction permits.

Pursuant to a prehearing conference held this date: *It is ordered*, This 22d day of June 1962, that the hearing herein now scheduled for July 25, 1962, be and the same is hereby rescheduled for Sep-

tember 20, 1962, 10:00 a.m., in the Commission's Offices, Washington, D.C.

Released: June 25, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-6332; Filed, June 28, 1962;
8:53 a.m.]

[Docket Nos. 14629, 14630; FCC 62M-889]

RHODE ISLAND-CONNECTICUT RADIO CORP. (WERI-FM) AND WILLIE BROADCASTING CO.

Order Establishing Procedural Dates

In re applications of Rhode Island-Connecticut Radio Corporation (WERI-FM), Westerly, Rhode Island, Docket No. 14629, File No. BPH-3669; and The Willie Broadcasting Company, Willimantic, Connecticut, Docket No. 14630, Filed No. BPH-3693; for construction permits (FM).

Pursuant to agreement of counsel for all parties at the prehearing conference held on June 22, 1962: *It is ordered*, This 22d day of June 1962, that the following procedural dates are established:

Exchange of applicants' entire direct case exhibits in written form (by mail) with copies to the Hearing Examiner, July 16, 1962. Notification of witnesses, if any, desired for cross-examination, July 20, 1962. Commencement of hearing (as previously scheduled), July 24, 1962 (10:00 a.m.).

Released: June 25, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-6333; Filed, June 28, 1962;
8:53 a.m.]

[Docket No. 14577; FCC 62M-892]

TRIANGLE PUBLICATIONS, INC. (WNHC-TV)

Order Continuing Hearing

In re application of Triangle Publications, Inc. (WNHC-TV), (Radio and Television Division), New Haven, Connecticut, Docket No. 14577, File No. BPCT-2897; for construction permit.

The Hearing Examiner having under consideration the oral request of counsel for Triangle Publications, Inc. (WNHC-TV) for continuance of the hearing in this proceeding from June 26 to July 2, 1962;

It appearing that a sudden death in the family of counsel for applicant requires said counsel to leave Washington, D.C., making impossible his attendance at the hearing presently scheduled for June 26; and

It further appearing that counsel for the other parties have informally consented to immediate consideration and grant of the request and that good cause has been shown for a grant thereof;

It is ordered, This 25th day of June 1962, that the subject request is granted,

and that the hearing, presently scheduled to commence on June 26, 1962, is continued to 10:00 a.m., July 2, 1962.

Released: June 26, 1962.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-6334; Filed, June 28, 1962;
8:53 a.m.]

FEDERAL MARITIME COMMISSION

BOARD OF PORT COMMISSIONERS OF THE CITY OF OAKLAND AND SEA-LAND SERVICE, INC.

Notice of Agreement

Notice is hereby given that the agreement described below has been filed with the Commission for determination as to whether it is subject to section 15 of the Shipping Act, 1916, as amended, (39 Stat. 733, 75 Stat. 763; 46 U.S.C. 814):

Proposed Agreement No. 8845 between the Board of Port Commissioners of the City of Oakland (hereinafter referred to as Port of Oakland) and Sea-Land Service, Inc. (hereinafter referred to as Sea-Land) is a lease and preferential assignment agreement of Parcels A and B described therein. Parcel A is a facility to be used as a container yard. Parcel B is a wharf.

The agreement provides that the Lessee shall guarantee as rental each month a fixed minimum sum. The amount of the "port terminal charge" prescribed by Port of Oakland Tariff No. 2 for the passage of cargo in containers over Parcel B from or to containerships and for use of Parcel A for receipt, handling, storage and delivery of cargo will be applied against the minimum fixed rental. If during any month the port terminal charge exceeds the minimum fixed rental, the excess shall be paid to the Port of Oakland. The port terminal charge, but not the minimum, is subject to review and adjustment in accordance with the so-called "Freas Formula," on a prospective basis at any time after a period of six (6) consecutive months during which the average monthly net volume of inbound and outbound traffic moving over Parcel B exceeds 25,000 tons.

The proposed assignment for the docking and mooring of vessels at Parcel B is preferential but not exclusive. Use of Parcel A is exclusive. Whenever Parcel B or any part thereof is not required for use of vessels of the Lessee the Executive Director of the Port of Oakland shall have the right to and may make temporary assignments to other vessels as provided in the Port's Tariff No. 2.

The Commission will consider whether proposed Agreement No. 8845 is subject to section 15, Shipping Act, 1916, and if so whether it would be approvable under the standards of that section.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Domestic Regulations, Federal Maritime Commission, Washington, D.C., and may submit within 20 days after publication of this notice in the

FEDERAL REGISTER, written statements with reference to this agreement and their position as to approval, disapproval, or modification, together with request for hearing should a hearing be desired.

Dated: June 25, 1962.

GEO. A. VIEHMANN,
Assistant Secretary.

[F.R. Doc. 62-6306; Filed, June 28, 1962;
8:47 a.m.]

HOUSING AND HOME FINANCE AGENCY

Public Housing Administration FINANCING OFFICERS, LEGAL DIVISION

Delegation of Final Authority

Section II *Delegation of final authority* is amended as follows:

1. Paragraph E6 is amended as follows: Delete the title "Administrative Assistant to the Legal Division," and substitute in lieu thereof "Financing Officers, Legal Division."

Approved: June 21, 1962.

[SEAL] MARIE C. MCGUIRE,
Commissioner.

[F.R. Doc. 62-6312; Filed, June 28, 1962;
8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24D-2478]

PROFESSIONAL INSURORS AND INVESTORS, LTD.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JUNE 25, 1962.

I. Professional Insurors and Investors, Ltd. (issuer), a Colorado corporation, 123 Cook Street, Denver, Colorado, filed on November 4, 1960, a notification and offering circular relating to an offering of 215,000 shares of its \$1.00 par value common stock at an offering price of \$1.00 per share for an aggregate of \$215,000, and filed various amendments thereto, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) of the Act and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with in that the issuer has:

1. Failed to cooperate with the staff in furnishing pertinent information in connection with the offering.

2. Failed to file a report on Form 2-A.

B. The notification and offering circular contain untrue statements of material facts and omit to state material

facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in

1. The statement that 50 percent of the offering will be spent for the purpose of purchasing land and developing small apartment houses in Denver, Colorado, and vicinity.

2. The failure to disclose that the company is not keeping and has not kept accurate and current financial records.

3. The failure to disclose the remuneration of the three highest paid officers and the aggregate remuneration of the officers and directors as a group.

III. 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 be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; 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, this 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 any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 62-6322; Filed, June 28, 1962;
8:51 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 655]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 26, 1962.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by

petitioners must be specified in their petitions with particularity.

No. MC-FC 35372. By order of June 20, 1962, the Transfer Board approved the lease to Pacific Inland Transportation Company, a corporation, Sunland Park, N. Mex., of Permit No. MC 34227, issued August 27, 1943, to E. L. Northcutt, Albuquerque, N. Mex., authorizing the transportation of: Onions, carrots, and potatoes, from Duncan, Ariz., to Albuquerque, N. Mex., agricultural commodities and canned goods from Denver, Colo., to Albuquerque, N. Mex., potatoes, lettuce, peas, broccoli, and cauliflower, from Alamosa, Colo., to Albuquerque, N. Mex., from Del Norte, Colo., to Albuquerque, N. Mex., canned grapefruit juice, grapefruit, oranges, and agricultural commodities, from Brownsville, Tex., to Albuquerque, N. Mex., such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies, used in the conduct of such business, from Los Angeles, Calif., to Albuquerque, N. Mex., from Albuquerque, N. Mex., to Gallup, N. Mex., and grapefruit, oranges, bananas, pineapples, lemons, potatoes, onions, and peppers, from El Paso, Tex., to Albuquerque, N. Mex. William J. Torrington, 1003 Maryland Trust Building, Baltimore 2, Md., attorney for applicant.

No. MC-FC 64786. By order of June 20, 1962, the Transfer Board approved the transfer to South Branch Motor Freight, Inc., Petersburg, W. Va., of that portion of the operating rights in Certificate No. MC 7535, issued February 3, 1950, to Edgar Head McDonald, doing business as E. H. McDonald, Headsville, W. Va., authorizing the transportation, over irregular routes, of general commodities, excluding household goods, commodities in bulk, and other specified commodities, between points in Hampshire, Grant, and Mineral Counties, W. Va., on the one hand, and, on the other, Baltimore, Md. Eston H. Alt, P.O. Box 81, Winchester, Va., applicants' representative.

No. MC-FC 64889. By order of June 20, 1962, the Transfer Board approved the transfer to Dudley H. Howerly, doing business as Laramie-Walden Bus Line, 303 South Second Street, Laramie, Wyo., of Certificate No. MC117506, issued August 17, 1959, to C. Edward Long, doing business as Laramie-Walden Bus Lines, 164 North Third Street, Laramie, Wyo., authorizing the transportation of: Pas-

sengers and their baggage, and express, mail, and newspapers in the same vehicle with passengers, between Laramie, Wyo., and Walden, Colo., serving all intermediate points.

No. MC-FC 64910. By order of June 20, 1962, the Transfer Board approved the transfer to Chester Hodgdon, doing business as Marshall Motor Coach, Marshalltown, Iowa, of that portion of the operating rights in Certificate No. MC 107575, issued January 19, 1956, to Mid-Western Charter Bus, Inc., Mason City, Iowa, authorizing the transportation, over irregular routes, of passengers and their baggage, in round-trip charter operations, over irregular routes, beginning and ending at points in Poweshiek, Marion, Tama, and Jasper Counties, Iowa, and extending to points in Missouri, Illinois, Wisconsin, Minnesota, South Dakota, Nebraska, and Colorado. Robert R. Rydell, 1020 Savings and Loan Building, Des Moines 9, Iowa, applicants' attorney.

No. MC-FC 64939. By order of June 20, 1962, the Transfer Board approved the transfer to Reilley Truck Line, a corporation, Stockton, Calif., of Certificates Nos. MC 40714 and MC 40714 Sub-1, issued June 15, 1943 and January 22, 1953, respectively, to H. F. Reilley, doing business as Reilley Truck Line, Stockton, Calif., authorizing the transportation of: Flour and cereals, from Stockton and San Francisco, Calif., to Lodi and 39 other specified points in California; sugar from Manteca, Calif., to Stockton, Calif., lumber, from Oakland, Calif., to Stockton, machinery, from Stockton, Calif., to Sacramento, Calif., household goods, as defined by the Commission, between Stockton, Calif., on the one hand, and, on the other, points in California within 250 miles of Stockton; and canned pineapple and canned pineapple juice, over irregular routes, from ports of Oakland and Alameda, Calif., to Stockton, Calif. Marshall G. Berol, Berol, Loughran & Geenaert, 100 Bush Street, San Francisco 4, Calif., attorney for applicants.

No. MC-FC 64992. By order of June 20, 1962, the Transfer Board approved the transfer to Dino D'Agata, Northeast Corner, 25th and Dickinson Streets, Philadelphia, Pa., of that portion of the operating rights in Certificate No. MC 114301 Sub-4, issued March 22, 1961, to Delaware Express Co., a corporation, P.O. Box 141, Elkton, Md., authorizing the transportation, over irregular routes,

of malt beverages, from Philadelphia, Pa., to points in Connecticut and New York, from Allentown, Pa., to Atlantic City, Camden, Hammonton, Jersey City, Paulsboro, Penns Grove, and Wildwood, N.J., Baltimore and Cumberland, Md., Beckley, W. Va., New York, N.Y., Roanoke and Harrisonburg, Va., Wilmington, Del., and Washington, D.C., and brewers' supplies, from Baltimore, Md., and Jersey City, N.J., to Allentown, Pa.

No. MC-FC 65021. By order of June 20, 1962, the Transfer Board approved the transfer to Evans Express Company, Inc., of a portion of Certificate No. MC 32102, issued October 17, 1957, to T. A. D. Trucking Corporation, Brooklyn, N.Y., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities between points in Hudson, Bergen, Passaic, and Essex Counties, N.J., on the one hand, and, on the other, New York, N.Y. John J. Brady, Jr., 75 State Street, Albany 7, N.Y., attorney for applicants.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 62-6325; Filed, June 28, 1962;
8:51 a.m.]

FOURTH SECTION APPLICATION FOR RELIEF

JUNE 26, 1962.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 37815: *Sugar from points in Louisiana to Atlanta, Tex.* Filed by Southwestern Freight Bureau, Agent (No. B-8233), for interested rail carriers. Rates on sugar, beet or cane, in carloads, from points in Louisiana, to Atlanta, Tex.

Grounds for relief: Rail-private truck and Texas intrastate competition.

Tariff: Supplement 122 to Southwestern Freight Bureau tariff I.C.C. 4088.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 62-6324; Filed, June 28, 1962;
8:51 a.m.]

CUMULATIVE CODIFICATION GUIDE—JUNE

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