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Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1964, and specifies how they are affected.

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Rules and Regulations

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.

PART 1—GENERAL PROVISIONS

1. Sections 1.107, 1.108(c), 1.109–1, and 1.109–2 are revised and a new § 1.109–5 is added, as follows:

§ 1.107 Dissemination and effective date of the regulation and revisions.

The Armed Services Procurement Regulation, and revisions thereof, will be distributed by the Departments to all interested activities and individuals within the Department of Defense. The Departments shall obtain from the Government Printing Office the number of copies of the regulation, and revisions thereof, required to make this distribution. Private firms, individuals, and others outside the Department of Defense may obtain copies by purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402. Revisions of the regulation shall be effective at all applicable echelons 90 days after date of issuance, unless otherwise prescribed in any such revisions.

§ 1.108 Departmental procurement instructions and ASPR implementations.

* * * * *

(c) Each Department shall furnish to the other Departments one copy of each Departmental procurement instruction issued in accordance with paragraphs (a) and (b) of this section.

* * * * *

§ 1.109–1 Applicability.

For the purpose of this section, a deviation shall be considered to be any of the following:

(a) When a contract clause is set forth verbatim in this subchapter, use of a contract clause covering the same subject matter which varies from the coverage of this subchapter, or use of a collateral provision which modifies either the clause or its prescribed application constitutes a deviation; however, in the case of a purchase or contract of an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, such contract clauses may (subject to the direction of authority above the level of the contracting officer) be modified if no change in intent, principle, or substance is made (Offshore contracting activities shall keep the cognizant unified Commander advised of significant deviations effected under this paragraph.)

(b) Commission of any mandatory contract clause constitutes a deviation;

(c) When a Standard, DD, or other form is prescribed by this subchapter or a Department of Defense Directive, use of any other form for the same purpose constitutes a deviation;

(d) Alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by this subchapter or a Department of Defense Directive constitutes a deviation;

(e) When limitations are imposed in this subchapter or a Department of Defense Directive upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations constitutes a deviation; or

(f) When a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by this subchapter, any policy, procedure, method, or practice which is inconsistent with that set forth constitutes a deviation.

§ 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 MAT 21C; 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.

§ 1.109–5 Request for approval of proposed deviation.

Request for approval of any deviation shall be forwarded to the approving authority through procurement channels. Each submission shall contain as a minimum:

(a) Identification of the requirement of this subchapter from which deviation is sought;

(b) A full description of the deviation and the circumstances in which it will be used;

(c) A description of the intended effect of the deviation;

(d) A copy of any pertinent document, including forms or clauses and the proposed contractor's request, if any;

(e) A statement of the period of time for which the deviation is needed; and

(f) Detailed reasons supporting the request.

2. Section 1.113–1 and 1.201–14 are revised, and new §§ 1.201–23 and 1.201–24 are added, as follows:

§ 1.113–1 Government personnel.

All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. See AR 600–50 and CPR C2, for the Army; SECNAV Instr. 5370.2B, revised 26 June 1963, for the Navy; AFR 30–30, for the Air Force; and DSAR 5500.1, for the Defense Supply Agency.

§ 1.201–14 Procuring activity.

"Procuring activity" includes, for the Army: U.S. Army Materiel Command and its subordinate Commands; U.S. Continental Army Command and the Zone of Interior Armies; U.S. Army, Alaska; U.S. Forces, Southern Command; U.S. Army Communications Zone, Europe; U.S. Army, Hawaii; U.S. Army, Japan; Military District of Washington, U.S. Army; National Guard Bureau; Office of the Chief of Engineers; Strategic Communications Command; Office of the Chief of Support Services; Office of the Surgeon General; Defense Atomic Support Agency; and U.S. Army Security Agency; for the Navy: each Bureau, the Office of Naval Research, the Navy Aviation Supply Office, the Military Sea Transportation Service, and the United States Marine Corps; for the Air Force: the Air Force Logistics Command and the Air Force Systems Command; for the Defense Supply Agency: the Defense Supply Centers and the Defense Traffic Management Service; for the Defense Communications Agency; The Headquarters, Defense Communications Agency, and the Defense Commercial Communications Office. It also includes any other procuring activity hereafter established. The number and designa-

tion of particular procuring activities of any Military Department may be changed by directive of the Secretary.

§ 1.201–23 Designee.

"Designee," as used, for example, in the phrase, "Head of a Procuring Activity or his designee", may include one or more officials.

§ 1.201–24 Contract Administration Office.

"Contract Administration Office" means an organizational element within the Department of Defense which performs functions relating to the administration of contracts and assigned preaward functions. The contract administration office and the purchasing office may be the same.

3. Paragraph (f) of § 1.302–3 is revised, and new §§ 1.324, 1.324–1, 1.324–2, 1.324–3, 1.324–4, 1.324–5, and 1.324–6 are added, as follows:

§ 1.302–3 Production and research and development pools.

* * * * *

(f) *Small business status.* Approval of an organization as a defense production or research and development pool under the Defense Production Act of 1950, as amended, does not confer upon such pool the preferences and privileges accorded to "small business concerns". Such preferences and privileges shall be accorded only to those pools which have been approved under the Small Business Act, Public Law 85–536, as amended.

§ 1.324 Warranties.

§ 1.324–1 General.

A warranty clause gives the Government a contractual right to assert claims regarding the deficiency of supplies or services furnished, notwithstanding any other contractual provisions pertaining to acceptance by the Government. Such a clause allows the Government additional time after acceptance in which to assert a right to correction of the defects, reperformance, an equitable adjustment in the contract price, or other remedies. This additional period of time may begin at the time of delivery or at the occurence of a specified event, and may run for a given number of days or months or until occurrence of another specified event. The value of a warranty clause depends upon the circumstances and its use is influenced by many factors (see § 1.324–3(b)).

§ 1.324–2 Policy.

(a) A warranty clause should be used only where it can be enforced and the potential increase in contract price is outweighed by the protection afforded the Government.

(b) A warranty clause shall not be included in cost-reimbursement type contracts, since the warranty aspects of the clause "Inspection of Supplies and Correction of Defects" in § 7.203–5 of this chapter, are sufficient to protect the interests of the Government.

(c) In negotiated procurements, the following clause shall be included in the solicitation when the procurement involves a commercial supply or service sold with a commercial warranty as a customary trade practice, and the contracting officer, after reviewing the factors listed in § 1.324–3(b), determines that the benefits of a commercial warranty should be obtained:

COMMERICAL WARRANTY (SEPT. 1964.)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services.

(d) Any warranty clause included in a contract shall not limit or be limited by any rights afforded to the Government by any other clause of the contract, especially the provisions of the "Inspection" clause relating to latent defects, fraud, and gross mistakes that amount to fraud. Care should be taken to insure that the clause used, and any other warranty provisions in the contract (e.g., in the specifications) are consistent, especially where performance specifications are used.

§ 1.324–3 Determination to use a warranty.

(a) Except for the "Commercial Warranty" clause covered in § 1.324–2(c), a warranty clause shall be included in individual procurements or in classes of procurements only after a written determination by the head of the procuring activity or his designee that it is in the best interest of the Government.

(b) In making the determination required in paragraph (a) of this section, at least the following factors shall be considered:

(1) Nature of the item and its end use;

(2) Cost of the warranty and degree of price competition as it may affect this cost;

(3) Cost of correction or replacement, either by the contractor or another source, in the absence of a warranty;

(4) Administrative cost and difficulty of enforcing the warranty;

(5) Ability to take advantage of the warranty, as conditioned by storage time, distance of the using agency from the source, or other factors;

(6) Operation of the warranty as a deterrent against substitution of defective or nonconforming supplies;

(7) Whether the Government inspection system provides adequate protection without a warranty;

(8) Whether contractor's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program;

(9) Reliance on "Brand-name" integrity;

(10) Whether a warranty is regularly given for a commercial component of a more complex end item;

(11) Criticality of item for protection of personnel, e.g., for safety in flight;

(12) The stage of development of the item and the state of the art; and

(13) Customary trade practices.

§ 1.324–4 Scope of warranty clause.

(a) The terms and conditions of a warranty clause vary with the circumstances of the procurement. The clause must state the duration of the warranty. The clause may either provide that the contractor will be liable for defects or nonconformance to contract requirements existing at the time of delivery, or provide that he will be liable for such defects or nonconformance which develop prior to the expiration of a specified period of time or before the occurrence of a specified event.

(b) A warranty clause shall also include a specified period during which notice must be given to the contractor of any defects or nonconformance to contract requirements. The interest of the Government normally will be protected if the notice period starts at the time of delivery, or where services are involved, upon acceptance thereof by the Government. In some cases, however, it may be necessary to start the notice period at a later time. For example, where conformance of supplies cannot be determined satisfactorily until they are used, the period should begin when the items are put to use, or where supplies are procured in lots under sampling procedures and delivered in increments for storage, the period may begin when the supplies are put to use or at the time of the last delivery.

(c) Where the Government specifies the design of the item and its precise measurements, tolerances, materials, tests, or inspection requirements, the contractor's liability for defects or nonconformance should usually be limited to those in existence at the time of delivery.

(d) Where a contract contains performance specifications and design is of minor importance, the contractor's liability may extend to defects or nonconformance to specifications which may arise after delivery of the supplies or acceptance of the services. Where appropriate, however, the warranty should be limited to defects or nonconformance existing at the time of delivery of the supplies or acceptance of the services.

(e) Ordinarily, the remedy provided under a warranty clause to return nonconforming supplies to the contractor for correction or replacement should satisfy the Government's needs. However, where the supplies are of such nature (e.g., subsistence or drugs) that correction or replacement does not afford adequate remedy to the Government, the clause should provide (1) that the contracting officer may either return the supplies to the contractor; dispose of them in a reasonable manner, or replace with similar supplies, and (2) that the contractor shall be liable for any cost occasioned to the Government thereby.

(f) When it can be foreseen that it will not be practical to return an article for correction or replacement because of the nature of its use or the cost of preparation for its return (e.g., where operating equipment installed in a vessel, aircraft or tank needs only a correction of adjustment, but to return it would re-

quire substantial expense of removal from where it is installed), the clause should provide that the Government may correct or require the contractor to correct the article in place at its location, at the contractor's expense.

(g) Where it is determined that a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item which may need special protection, e.g., installation, components, accessories, parts, sub-assemblies and preservation, packaging and packing, etc.

§ 1.324–5 Pricing aspects of fixed-price incentive contract warranty provisions.

In fixed-price incentive contracts, consideration should be given to the pricing aspects of the contract as they relate to a warranty. When it is determined to include a warranty clause, the estimated costs for the warranty shall normally be considered in establishing the incentive target price. Prior to the establishment of the total final price, all costs incurred or to be incurred by the contractor in complying with the warranty clause shall be considered when negotiating the final total negotiated cost. After the establishment of the total final price, contractor compliance with the warranty clause shall be at his expense and at no increase in the total final price. Equitable adjustments in the contract price under the warranty clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the incentive price revision clause.

§ 1.324–6 Warranty clauses.

(a) The following clause is an example of a warranty clause which is authorized for insertion in fixed-price supply contracts.

SUPPLY WARRANTY

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that _____*:

(i) all supplies furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract; and

(ii) the preservation, packaging, packing, and marking, and the preparation for and method of shipment of such supplies will conform with the requirements of this contract.

(b) The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in paragraph (a) of this clause _____**.

*State in the blank the specific warranty period, e.g., "at the time of delivery"; "for (insert period of time) after delivery" or the specified event whose occurrence will terminate the warranty period, e.g., the number of miles or hours of use, or combination of any applicable events or periods of time, as appropriate (see § 1.324–4(a)).

**Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) after delivery of the nonconforming supplies"; "within (insert period of time) of the last delivery under this contract", as appropriate (see § 1.324–4(b)).

(c) Within a reasonable time after such notice, the Contracting Officer may either:

(i) by written notice require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (a) of this clause; or

(ii) retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances and the Contractor shall promptly make appropriate repayment.

If the contract provides for inspection of supplies by sampling procedures, the Contracting Officer may, at his option, determine the quantity of supplies or parts thereof which are subject to this paragraph in accordance with such sampling procedures.

(d) When return, correction or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant, and return.

(e) If the Contractor fails or refuses to correct or replace the nonconforming supplies within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure or refusal, the Contracting Officer may, by contract or otherwise, correct or replace them with similar supplies and charge to the Contractor the cost occasioned to the Government thereby. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(f) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

(g) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(h) The word "supplies" as used herein includes related services.

(i) The rights and remedies of the Government provided in this clause do not limit any rights afforded to the Government by any other clause of the contract.

(b) When the contractor's design is to be used rather than a Government design, insert the word "design," before "material" in paragraph (a)(i) of the clause in paragraph (a) of this section.

(c) The following paragraph (c) may be substituted for the paragraph (c) of the clause in paragraph (a) of this section when the contract provides for inspection of supplies by sampling procedures:

(c) Conformance of supplies or parts thereof subject to warranty action shall be determined in accordance with the applicable sampling procedures contained in the contract except as provided herein. For sampling purposes, the Contracting Officer may group any supplies delivered under this contract. The size of the sample shall be that required by sampling procedure specified in the contract for the quantity of supplies on which warranty action is proposed. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection, provided, the supplies remaining are reasonably representative of the quantity on which warranty action is proposed. The original inspection lots need not be reconstituted nor shall the Contracting Officer be required to use the same lot size as on original inspection. Within a reasonable time after notice of any breach of warranties in paragraph (a) of this clause as determined herein, the Contracting Officer may exercise one or more of the following options:

(i) require an equitable adjustment in the contract price for any group of supplies;

(ii) screen the supplies grouped under this clause at Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement;

(iii) require the Contractor to screen the supplies at depots designated by the Government within the continental United States and to correct or replace all nonconforming supplies;

(iv) return the supplies grouped under this clause to the Contractor for screening and correction or replacement.

(d) The following paragraph (d) may be substituted for paragraph (d) of the clause in paragraph (a) of this section when it is desirable to provide that necessary transportation incident to correction or replacement will be at the Government's expense. This may be appropriate, for instance, when the cost of a warranty would otherwise be prohibited.

(d) When correction or replacement is required, and transportation of supplies in connection with such correction or replacement is necessary, transportation charges and responsibility for such supplies while in transit shall be borne by the Government.

(e) The following paragraph (e) may be substituted for paragraph (e) of the clause in paragraph (a) of this section when the supplies cannot be obtained from another source.

(e) If the Contractor does not agree as to his responsibility to correct or replace the supplies delivered, he shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c) to correct or replace the defective or nonconforming supplies. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted. Failure to agree to such an equitable adjustment of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The following paragraph should be added when the clause in paragraph (a) of this section is included in a fixed-price incentive contract.

(j) Prior to the establishment of the total final price, all costs incurred, or to be incurred by the Contractor in complying with this clause shall be considered when negotiating the final total negotiated cost under the Incentive Price Revision clause of this contract. After the establishment of the total final price, Contractor compliance with this clause shall be at the Contractor's expense and at no increase in the total final price. Any equitable adjustments made pursuant to paragraph (c) of this clause shall be

governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

(g) The following clause is an example of a warranty clause which is authorized for insertion in fixed-price services contract.

SERVICE WARRANTY

Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will be free from defects in workmanship and will conform to the requirements of this contract at time of acceptance. The Contracting Officer shall give written notice of any such defect or nonconformance to the Contractor _____*. Such notice shall state either (i) that the Contractor shall correct or reperform any defective or nonconforming services, or (ii) that the Government does not require correction or replacement. If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby or obtain an equitable adjustment in the contract price. If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price. Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(h) When the contractor's design is to be used rather than a Government design, insert the words "design and" before "workmanship" in the first sentence of the clause in paragraph (g) of this section.

4. In § 1.603(a), the text pertaining to "Type F" is revised, and in § 1.701–1, paragraph (d) is revised, as follows:

§ 1.603 Grounds for listing and treatment to be accorded listed concerns.

(a) * * *

Type F includes concerns which have been debarred by the appropriate Secretary or the Executive Vice Chairman of the President's Committee on Equal Employment Opportunity for noncompliance with the Equal Opportunity clause. Concerns under Type F listings may not be awarded contracts or be solicited for bids.

* * * * *

§ 1.701–1 Small business concerns.

* * * * *

(d) *Service industries.* For services not elsewhere defined in this part, the average annual sales or receipts of the concern and its affiliates for the preceding three fiscal years must not exceed $1 million ($1,250,000 if located in Alaska). Any concern bidding on a contract for engineering services or naval architectural services is classified as small if its average annual sales or receipts for its preceding three fiscal years do not exceed $5 million.

* * * * *

5. A footnote "6", referring to item 3731 in the table, is added to the footnotes at the end of the table in § 1.701–4; and §§ 1.806–4(a) and 1.1504(a) are revised, as follows:

§ 1.701–4 Manufacturing industry employment size standards.

* * * * *

Classification Code	*Industry*	*Employment Size Standard (Number of Employees)*
*	*	*
MAJOR GROUP 37—TRANSPORTATION EQUIPMENT		
*	*	*
3731	Shipbuilding and repairing [6]	1000

[6] Shipbuilding and repairing industry includes establishments primarily engaged in building and repairing all types of ships, barges, canal boats, and lighters, of 5 gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabrication or repairing structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included. The size standard for Boatbuilding and Repairing (establishments primarily engaged in building and repairing all types of boats, except rubber boats, under 5 gross tons) is 500.

* * * * *

§ 1.806–4 Shipbuilding and repairing industry (Notification No. 57).

(a) As used in this section, the "shipbuilding and repairing industry" (Industry Category 3731) includes establishments primarily engaged in building and repair of all types of ships, barges, canal boats, and lighters of five gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabricating or repairing structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included.

* * * * *

§ 1.1504 Procedures.

(a) When a contract is to contain an option clause, the solicitation must contain an appropriate option provision. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended, under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to (1) necessary lead time in order to assure continuous production and (2) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. When a solicitation contains an option which requires the offering of additional quantities of supplies at unit prices no higher than those for the initial quantities, it shall provide that the option quantities shall not exceed 50 percent of the initial quantity. When unusual circumstances exist, however, the head of the procuring activity or his designee may approve a greater percentage of quantity. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file.

* * * * *

6. A new Subpart R is added, as follows:

Subpart R—Post-Award Orientation of Contractors

Sec.

AUTHORITY: The provisions of this Subpart R issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

Subpart R—Post-Award Orientation of Contractors

§ 1.1801 Scope of subpart.

This subpart prescribes the policy and procedures for post-award orientation in connection with contracts and subcontracts. This subpart is not applicable to construction contracts as defined in § 16.400 of this chapter.

§ 1.1802 Policy.

When it is determined after contract award, in accordance with the factors set forth in § 1.1803–1, that the contractor does not or may not have a clear understanding of the scope of the contract, the technical requirements, or the rights and obligations of the parties, it is essential that the Government initiate post-award orientation action to clarify contract requirements and resolve misunderstandings. A mutual understanding may be achieved by conducting a post-award orientation conference, as provided in § 1.1803, to assure that all

*Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) from the date of acceptance by the Government"; "within (insert number of hours) of use by the Government"; or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or periods of time, as appropriate.

matters requiring clarification or resolution are considered and contractual requirements explained. In less complex contracts, the objective may be achieved without a conference by writing the contractor a letter as provided in § 1.1806. For the post-award orientation of subcontractors, see § 1.1804.

§ 1.1803 Post-award orientation conferences.

§ 1.1803–1 Factors.

In selecting contracts for post-award orientation conferences, the following factors shall be considered:

(a) Nature and extent of the preaward survey and discussions with the contractor,

(b) Technical complexity of the item or service,

(c) End use or relationship of the item or service to critical programs,

(d) Urgency of the delivery schedule,

(e) Length of the planned production cycle,

(f) Past performance of the contractor,

(g) Procurement history of the item or service,

(h) Type and value of the contract,

(i) Provisioning requirements,

(j) Contractor's experience with defense contracts or with the item or service being procured,

(k) Extent of subcontracting, and

(l) Hazardous material or operations and safety precautions required.

§ 1.1803–2 Initial action.

(a) The need for a post-award orientation conference normally will be established as a result of substantive review and analysis of the contract by the Contract Administration Office. However, the contracting officer or technical representative of the purchasing office may initiate the request for a conference. A conference of Government personnel normally shall be held prior to notifying and conferring with the contractor to assure that the Government position on all matters is established.

(b) An orientation conference shall be held as soon as possible after contract award when analysis of the contract or other information indicates existing or potential problems which may adversely affect performance. The office which determines the need for a post-award orientation conference normally will make all necessary arrangements to:

(1) Conduct a preliminary meeting of Government personnel,

(2) Establish the time and place of the orientation conference,

(3) Prepare an agenda,

(4) Notify all participants,

(5) Designate a chairman, and

(6) Prepare a summary report of the conference.

When the purchasing office initiates the request for a conference, the above arrangements may be made by that office or, at its request, by the Contract Administration Office.

§ 1.1803–3 Agenda.

The agenda of an orientation conference may include such matters as:

(a) Special contractual provisions,

(b) Clarification of specifications and other work requirements,

(c) Production planning,

(d) Furnishing and control of Government property,

(e) Billing and payment procedures,

(f) Reporting requirements,

(g) Processing of engineering changes and change orders,

(h) Quality control and testing requirements,

(i) Provisioning requirements,

(j) Packaging and shipping,

(k) Subcontract consent,

(l) Prime contractor responsibility for subcontracts,

(m) Allowability of cost determinations,

(n) Incentive features and value engineering,

(o) Security requirements,

(p) Progress target dates, and

(q) Major problem areas or other appropriate topics.

§ 1.1803–4 Participants.

It is essential that all parties involved in the execution, administration, and performance of a Government contract have a clear and mutual understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties. Participants in a post-award orientation conference may include, as appropriate, representatives from the purchasing office and the Contract Administration Office, other Government personnel concerned, and the contractor's representatives.

§ 1.1803–5 Conference procedure.

The chairman of the conference shall conduct the meeting. Unless a specific contract change has been agreed to by the contracting officer at the preliminary meeting of Government personnel, the chairman will emphasize that the conference is not being held for the purpose of changing the contract. The contracting officer may make commitments or give directions within the scope of his authority, and he shall reduce to writing and sign any such commitment or direction. Participants who are without authority to bind the Government contractually shall not take action which in any way alters the provisions of the contract. Information and guidance given merely to explain existing provisions and requirements of the contract may, however, be given, but only by participants acting within the scope of their authority. All such information and guidance shall be specifically included in the summary report (see § 1.1805).

§ 1.1804 Subcontract conferences.

The prime contractor is generally responsible for conducting any necessary post-award orientation conferences with subcontractors. However, in exceptional cases involving subcontracted items or services of technical complexity, the prime contractor may invite the participation of the Government in such conferences or the Government may request the prime contractor to initiate such a conference with the subcontractor. Representatives from the Contract Administration Office administering the prime contract and subcontract should be included as participants. Government participants in such conferences must recognize the lack of privity of contract between the Government and the subcontractor, and shall not give commitments, directions, or take any action which change or are inconsistent with the provisions of the subcontract.

§ 1.1805 Forms and reports.

Post-Award Conference Record (DD Form 1484) shall be used in preparing the agenda and conducting the conference to assure that all significant matters are covered. A summary report of the conference shall be prepared under the supervision of the chairman and signed by him. The report shall cover all items discussed, including areas requiring resolution, controversial matters, and the names of the participants assigned responsibility for further actions, including the due dates for such actions. DD Form 1484 may be utilized as the summary report, where appropriate. Copies of the summary report shall be furnished to the purchasing office, the contract administration office, the contractor, and other participants and activities requiring the information.

§ 1.1806 Post-award letters.

In less complex contracts, a letter to the contractor may suffice in lieu of a conference. When such a letter is appropriate, it should identify the Government representative responsible for administering the contract, and cite any unusual contract requirements such as special reports, revised military specifications, preproduction tests, subcontracting consent requirements, Government property to be furnished, and any other significant requirements. (See, for example, the items in DD Form 1484.)

PART 2—PROCUREMENT BY FORMAL ADVERTISING

7. In § 2.201(a), subparagraph (28) is revoked, as follows:

§ 2.201 Preparation of invitation for bids.

* * * * *

(a) * * *

(28) [Revoked]

PART 3—PROCUREMENT BY NEGOTIATION

8. In § 3.202–2, paragraph (f) is revised; in § 3.501(b), subparagraph (39) is revoked and subparagraph (46) is revised; and in § 3.811, paragraph (a) is revised, to read as follows:

§ 3.202–2 Application.

* * * * *

(f) Purchase request citing an issue priority designator 1 through 6, inclusive, under the Uniform Material 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.

§ 3.501 Preparation of request for proposals or request for quotations.

* * * * *

(b) * * *

(39) [Revoked]

* * * * *

(46) If a firm fixed-price contract or fixed-price contract with escalation is to be awarded, the Certificate of Independent Price Determination as required by § 1.115 of this chapter.

* * * * *

§ 3.811 Record of price negotiation.

(a) At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared a memorandum, setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price. The memorandum should include an explanation of why cost or pricing data was, or was not, required (see § 3.807) and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

* * * * *

PART 6—FOREIGN PURCHASES

9. Paragraph (a) in § 6.601 is revised; in § 6.603–3(a), the clause heading and clause paragraph (d)(iii) are revised; and in § 6.603–3(b), the clause heading and clause paragraph (b)(4)(iii) are revised, as follows:

§ 6.601 Scope of subpart.

(a) This subpart sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of supplies obtained outside the United States. Two exceptions to this rule are available to the Department of Defense: "emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Schedule 8, Part 3, Item No. 832, Tariff Schedules of the United States, and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This subpart prescribes the uses and limits of these two exceptions.

* * * * *

§ 6.603–3 Contract clauses.

(a) *Duty-free entry for designated items.* * * *

DUTY-FREE ENTRY FOR CERTAIN SPECIFIED ITEMS (SEPT. 1964)

* * * * *

(d) * * *

(iii) the notation: "UNITED STATES (insert name of Military Department)—DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, Collector of Customs, kindly notify the (insert title and address of Government representative), who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

* * * * *

(b) *Duty-free entry for items not identified in the contract.* * * *

NOTICE OF IMPORTS—POSSIBLE DUTY-FREE ENTRY (SEPT. 1964)

* * * * *

(b) * * *

(4) * * *

(iii) the notation: "UNITED STATES (insert name of Military Department)—DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832, Tariff Schedules of the United States. Upon arrival at port of entry, Collector of Customs kindly notify the (insert title and address of Government representative), who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

* * * * *

10. In § 6.603–4, paragraphs (b) and (f) are revised; and in § 6.605–2, the clause heading and clause paragraph (d)(iii) are revised, as follows:

§ 6.603–4 Customs entries and duty-free certificates.

* * * * *

(b) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clauses set forth in § 6.603–3 or authorized by § 6.605, the contractor shall be notified that the foreign supplier is to include on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832, Tariff Schedules of the United States.

* * * * *

(f) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto in the following form:

SEPTEMBER 1964.

I certify that the procurement of this material constituted an emergency purchase of war material abroad by the (indicate Department of the Army, Department of the Navy, Department of the Air Force, or Defense Supply Agency) and it is accordingly requested that such material be admitted free of duty pursuant to Schedule 8, Part 3, Item No. 832, Tariff Schedules of the United States.

_____
(Name)

_____
(Title), who has been designated to execute free entry certificates for the above named (Department or Agency)

_____
(Organization)

§ 6.605–2 Contract clause.

* * * * *

DUTY-FREE ENTRY—CANADIAN SUPPLIES (SEPT. 1964)

(d) * * *

(iii) the notation: "UNITED STATES (insert name of Military Department)—DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, Collector of Customs, kindly notify the (insert title and address of Government representative), who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate.";

* * * * *

PART 7—CONTRACT CLAUSES

11. Sections 7.104–29(a) and 7.104–41 are revised; the clause in § 7.104–42(a) is revised; and new §§ 7.104–51 and 7.105–10 are added, as follows:

§ 7.104–29 Price reduction for defective cost or pricing data.

(a) The following clause shall be inserted in any cost-reimbursement type, price redeterminable, or incentive contract. It shall also be inserted in any other negotiated contract over $100,000 except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In addition, the contracting officer shall include this clause in other negotiated contracts for which he has obtained a Certificate of Current Cost or Pricing Data in accordance with § 3.807–3(b)(4) of this chapter in connection with the initial pricing of the contract, and in such cases paragraph (c) may be appropriately modified in respect to subcontracts of less than $100,000.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (SEPT. 1964)

(a) If the Contracting Officer determines that any price, including profit or fee, negotiated in connection with this contract was increased by any significant sums because the Contractor, or any subcontractor in connection with a subcontract covered by (c) below, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Contractor's Certificate of Current Cost or Pricing Data, then such price shall be reduced accordingly and the contract shall be modified in writing to reflect such adjustment.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) The Contractor agrees to insert the substance of paragraphs (a) and (c) of this clause in each of his cost-reimbursement type, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder in excess of $100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quanties to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clause.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right

to price reduction under this clause shall be limited to such price adjustments.

(b) If the Contractor determines that any price, including profit or fee, negotiated in connection with any price adjustment within the purview of paragraph (a) above was increased by any significant sum because the subcontractor or any of his subcontractors in connection with a subcontract covered by paragraph (c) below, furnished incomplete or inaccurate cost or pricing data, or data not current as of the date of execution of the subcontractor's certificate of current cost or pricing data, then such price shall be reduced accordingly and the subcontract shall be modified in writing to reflect such adjustment.

(c) The subcontractor agrees to insert the substance of this clause in each subcontract hereunder which exceeds $100,000.

* * * * *

§ 7.104–41 Audit and records.

(a) Insert the following clause only in firm fixed-price and fixed-price with escalation negotiated contracts which exceed $100,000, except where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

AUDIT (SEPT. 1964)

(a) For purposes of verifying that cost or pricing data submitted, in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(b) The Contractor agrees to insert the substance of this clause including this paragraph (b) in all subcontracts hereunder in excess of $100,000, so as to apply until three years after final payment under the subcontract, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of $100,000, the Contractor shall insert the substance of the following clause to apply until three years after final payment under the subcontract.

AUDIT—PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000 unless the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation and further provided that such change or other modification to this contract must result from a change or other modification to the Government prime contract.

(b) For purposes of verifying that cost or pricing data submitted in conjunction with a contract change or modification involving an amount in excess of $100,000 are accurate, complete and current, the Contracting Officer or his authorized representative shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause, including this paragraph (c), in all subcontracts hereunder in excess of $100,000 so as to apply until three years after final payment of the subcontract.

(b) Insert the following clause in formally advertised contracts which are expected to exceed $100,000, and in firm fixed-price and fixed-price with escalation negotiated contracts which exceed $100,000 when the price is based on adequate price competition, established catalog or market prices of commercial items solds in substantial quantities to the general public, or prices set by law or regulation. In negotiated contracts, delete from paragraph (b) of the clause the words "the Comptroller General of the United States".

AUDIT—PRICE ADJUSTMENTS (SEPT. 1964)

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000, unless the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) For purposes of verifying that cost or pricing data submitted in conjunction with a contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer, the Comptroller General of the United States, or any authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause in all subcontracts hereunder in excess of $100,000 so as to apply until three years after final payment under the subcontract and only when the change or other modification to the subcontract results from a change or other modification to the Government prime contract.

(c) Insert the following clause in any negotiated cost-reimbursement type, incentive, or price redeterminable contract.

AUDIT AND RECORDS (SEPT. 1964)

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The Contractor's plants, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his authorized representative.

(c) The Contractor shall preserve and make available his records (i) until the expiration of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract or (ii) litigation or the settlement of claims arising out of the performance of this contract, shall be retained until such appeals, litigation, or claims have been disposed of.

(d)(1) The Contractor shall insert the substance of this clause, including the whole of this paragraph (d), in each subcontract hereunder that is not on a firm fixed-price basis.

(2) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of $100,000, except those subcontracts covered by subparagraph (3) below.

AUDIT

(a) For purposes of verifying that cost or pricing data submitted in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(b) The Contractor agrees to insert the substance of this clause including this paragraph (b) in all subcontracts hereunder in excess of $100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(3) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of $100,000 where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

AUDIT—PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000 unless the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation and further *provided* that such change or other modification to this contract must result from a change or other modification to the Government prime contract.

(b) For purposes of verifying that any cost or pricing data submitted in conjunction with a contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall—until the expiration of three years from the date of final payment under

this contract—have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause including this paragraph (c) in all subcontracts hereunder in excess of $100,000, so as to apply until three years after final payment of the subcontract.

In cost-reimbursement type contracts that have separate periods of performance and that are to include, in the Examination of Records clause prescribed by § 7.203–7, the alternate subparagraph (a)(4) which is set forth in § 7.203–7(b), the clause set forth above in this paragraph shall be modified by adding the following to paragraph (c) thereof:

Notwithstanding the foregoing, the Contractor's obligation to preserve and make available his records shall not extend beyond the period of his like obligation under the "Examination of Records" clause of this contract.

Such contracts may be administered as indicated in § 7.203–7(b).

(d) The requirement for inclusion of the clauses in paragraphs (a) and (b) of this section may be waived for contracts with foreign governments or agencies thereof under circumstances where the requirement for the clauses in §§ 7.104–29 and 7.104–42 may be waived.

§ 7.104–42 Subcontractor cost and pricing data.

(a) * * *

SUBCONTRACTOR COST AND PRICING DATA (SEPT. 1964)

(a) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract; (ii) prior to the award of any subcontract the price of which is expected to exceed $100,000; (iii) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000; except in the case of (ii) or (iii) where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of his cost-reimbursement type, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of $100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST AND PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive or price redeterminable subcontract; (ii) prior to award of any subcontract, the price of which is expected to exceed $100,000; (iii) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000; except, in the case of (ii) or (iii), where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

* * * * *

§ 7.104–51 Commercial warranty.

In accordance with § 1.324 of this chapter, insert the clause in § 1.324–2.

§ 7.105–10 Supply warranty.

In accordance with § 1.324 of this chapter, an appropriate supply warranty clause may be inserted.

12. A new Subpart G is added, to read as follows:

Subpart G—Clauses for Facilities Contracts

AUTHORITY: The provisions of this Subpart G issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

Subpart G—Clauses for Facilities Contracts

§ 7.701 Applicability.

As used throughout this subpart, the term "facilities contract" means a contract under which Government facilities are provided to a contractor by the Government for use in connection with the performance of a separate contract or contracts for supplies or services. When property other than facilities is provided under a facilities contract, it shall be considered facilities for the purposes of that contract. Facilities contracts may take any of the following forms:

(a) Consolidated facilities contracts, which provide for both—

(1) The acquisition, construction, and installation of facilities; and

(2) The use, maintenance, accountability, and disposition of facilities;

(b) Facilities acquisition contracts, which provide for the acquisition, construction, and installation of facilities; or

(c) Facilities use contracts, which provide for the use, maintenance, accountability, and disposition of facilities.

§ 7.702 Required clauses for consolidated facilities contracts.

The following clauses shall be inserted in all consolidated facilities contracts.

§ 7.702–1 Definitions.

Insert the contract clause set forth in § 7.703–1 together with the following additional definitions.

(d) "Related procurement contract" means a Government contract or subcontract thereunder for furnishing supplies or services of any description, for the performance of which the use of the Facilities is or may be authorized.

(e) "Facilities" means, for purposes of this contract, all property provided under this contract. (Sept. 1964)

Additional definitions may be included in such clause provided they are not inconsistent with such clause or the provisions of this Regulation.

§ 7.702–2 Facilities to be provided.

FACILITIES TO BE PROVIDED (SEPT. 1964)

(a) The Contractor, at Government expense and subject to the terms and conditions of this contract, shall acquire, construct, or install the Facilities, and perform the work related thereto, described in the Schedule.

(b) The Government, subject to the terms and conditions of this contract, shall furnish to the Contractor the Facilities identified in the Schedule as Government-furnished Facilities. The Contractor, at Government expense, shall perform such work with respect to these Government-furnished Facilities as may be described in the Schedule.

§ 7.702–3 Late delivery, diversion, and substitution.

LATE DELIVERY, DIVERSION, AND SUBSTITUTION (SEPT. 1964)

(a) The Government shall not be liable to the Contractor for breach of contract by reason of nondelivery or of any delay in the delivery of the Facilities to be furnished by the Government hereunder.

(b) The Government, if it is determined by the Contracting Officer to be in the best interest of the Government, may divert the Facilities by directing:

(i) delivery of any or all of the Facilities acquired by or furnished to the Contractor hereunder to locations other than those specified in the Schedule; and

(ii) assignment, to the Government or to third parties, of purchase orders or subcontracts of the Contractor for any or all of the Facilities hereunder.

The work performed by the Contractor in complying with such directions shall be at Government expense.

(c) The Government may furnish any item of the Facilities, in lieu of the acquisition or construction thereof by the Contractor. In such event, the work performed by the Contractor in connection with the acquisition or construction of such Facilities, including the cost of terminating purchase orders or subcontracts therefor, shall be at Government expense.

(d) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any nondelivery, delay, diversion, or substitution under this clause.

§ 7.702–4 Changes.

CHANGES (SEPT. 1964)

(a) The Contracting Officer may at any time, by written order and without notice to the sureties, if any, make changes within the general scope of this contract, in the Facilities or work described in the Schedule. Work performed by the Contractor in complying with any such order shall be at Government expense. If any such change causes an increase or decrease in the estimated cost of this contract, in the time required for its performance, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in the estimated cost, the completion schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(b) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such change.

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

§ 7.702–5 Representations and warranties.

REPRESENTATIONS AND WARRANTIES (SEPT. 1964)

(a) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any item of the Facilities. To the extent practicable, the Contractor shall be afforded an opportunity to inspect all items of Facilities that are to be furnished by the Government prior to the shipment of such Facilities to the Contractor. In the event that any item of such Facilities is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, within thirty (30) days after receipt and installation thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it, or (ii) effect repairs or modifications.

(b) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by the return or disposition, or the repair or modification, of any item of Facilities under paragraph (a) above.

§ 7.702–6 Inspection.

INSPECTION (SEPT. 1964)

(a) The Facilities and work called for by this contract shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the Facilities and work called for by this contract. The Government, through any authorized representative, may inspect such Facilities and work at the plant or plants of

the Contractor or any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work to be performed by the Contractor under this contract or any related procurement contract.

(b) The Contracting Officer may at any time require the Contractor to remedy by correction or replacement any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) below, such corrections and replacements shall be carried out at Government expense if under the terms of this contract the Facilities or work thus corrected or replaced were initially provided or required to be performed at Government expense.

(c) The Contracting Officer may at any time require the Contractor, without cost to the Government hereunder or under any of its related procurement contracts or subcontracts, to correct or replace any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to:

(i) fraud, lack of good faith, or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives who has supervision or direction of—

(A) all or substantially all of the Contractor's business;

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(C) a separate and complete major industrial operation in connection with the performance of this contract; or

(ii) The conduct of one or more individual employees selected or retained by the Contractor after any of the supervisory personnel described in (i) above has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) Corrected or replaced Facilities or work shall be subject to the provisions of this clause in the same manner and to the same extent as Facilities or work originally completed under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer periods as may be specified in this contract.

§ 7.702–7 Excusable delays.

Insert the clause set forth in § 8.708 of this chapter, except that the reference in the last sentence thereof to the clause entitled "Termination" shall be changed to read "Termination of Work".

§ 7.702–8 Location of the facilities.

LOCATION OF THE FACILITIES (SEPT. 1964)

The Contractor may use the Facilities at any of the locations specified in the Schedule, and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as he may deem necessary for the protection of the Government's interest in the Facilities involved. Notwithstanding any inconsistency with the provisions of this contract, such terms and conditions shall prevail.

§ 7.702–9 Government bills of lading.

GOVERNMENT BILLS OF LADING (SEPT. 1964)

All shipments of the Facilities shall be made on Government bills of lading, unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by, and the Contractor shall be accountable therefor to, the transportation activity designated by the Contracting Officer.*

§ 7.702–10 Allowable cost and payment.

(a) Subject to the instructions set forth in paragraph (b) of this section, insert the following clause.

ALLOWABLE COST AND PAYMENT (SEPT. 1964)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer** to be allowable in accordance with (i) Section XV, Part 5, of the Armed Services Procurement Regulation in effect as of the date of this contract; and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

(c) Once each month (or at more frequent intervals, if approved by the Contracting Officer**), the Contractor may submit to an authorized representative of the Contracting Officer**, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(d) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of paragraph (e) below, make payment thereof as approved by the Contracting Officer**.

(e) At any time or times prior to final payment under this contract, the Contracting Officer** may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer**, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable cost hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided*, That such claims are not known to the Contractor on the date of the execution of the release: *And provided further*, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(b) In paragraph (f)(ii)(B) of the foregoing clause, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided*, That a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the clause prescribed by § 7.702–13.

§ 7.702–11 Limitation of cost.

LIMITATION OF COST (SEPT. 1964)

(a) It is estimated that the total cost to the Government for the performance of work under this contract which is provided herein to be at Government expense will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform such work within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of such work in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule or if at any time the Contractor has reason to believe that the total cost to the Government for the performance of such work will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of such work.

(b) The Government shall not be obligated to reimburse the Contractor under this contract for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue the performance of work under this contract which is provided

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* In contracts of the Department of the Navy, insert "the Cognizant Inspector" in lieu of "the Contracting Officer".

** In contracts of the Department of the Navy, insert "the Director, Contract Audit Division, Auditor General of the Navy, Washington, D.C." in lieu of "the Contracting Officer".

herein to be at Government expense, or to incur costs therefor, in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performing such work. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 7.702–12 Use and charges.

USE AND CHARGES (SEPT. 1964)

(a) The Contractor may use the Facilities without charge in the performance of:

(i) prime contracts with the Government which specifically authorize use without charge.

(ii) subcontracts held by the Contractor under Government prime contracts or subcontracts of any tier thereunder if the Contracting Officer having cognizance of the prime contract concerned has authorized use without charge by approving a subcontract specifically authorizing such use or has otherwise authorized such use in writing, and

(iii) other work with respect to which the Contracting Officer has authorized use without charge in writing.

(b) Subject to the payment of a rental therefor, the Contractor may use all or part of the Facilities in the performance of work other than that specified in paragraph (a) above, as authorized by the Contracting Officer or as specifically provided in the Schedule. The amount of rentals to be paid for the right to use the Facilities under this paragraph (b) shall be determined in accordance with the following procedure.

(1) The following bases are or shall be established in writing for the rental computation prescribed in subparagraph (2) below in advance of any use of the Facilities under this paragraph:

(i) The rental rates for the right to use the Facilities shall be those set forth in Exhibit A.

(ii) The acquisition cost of the Facilities shall be the total cost to the Government, as determined by the Contracting Officer of each item of the Facilities, including the cost of the transportation and installation, if such costs are borne by the Government. When Government-owned special tooling or accessories are rented with any item of the Facilities, the acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When any item of the Facilities has been modernized by substantial rebuilding at Government expense so as to enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer, that such rebuilding and modernization represent. The determination made by the Contracting Officer under this subparagraph shall be final.

(iii) The rental period shall be not less than one month nor more than six months, as may be mutually agreed to.

(iv) For the purpose of computing any credit under subparagraph (2) below, the measurement unit for determining the amount of use of the Facilities by the Contractor shall be direct labor hours, sales, hours of use, or any other measurement unit which will result in an equitable apportionment of the rental charge, as may be mutually agreed to.

(2) The Contractor shall compute the amount of rentals to be paid for each rental period, using the bases established pursuant to subparagraph (1) above. The rental rates shall be applied to the acquisition cost of such of the Facilities as may have been authorized for use in advance pursuant to this paragraph (b), for each rental period. The full charge for each rental period, so determined, shall be reduced by a credit in the amount of such rental as would otherwise be properly allocable to work with respect to which the use of the Facilities without charge is authorized in accordance with paragraph (a) above. Such credit shall be computed by multiplying the full rental for the rental period by a fraction whose numerator is the amount of use of the Facilities by the Contractor without charge during such period, and whose denominator is the total amount of use of the Facilities by the Contractor during such period.

(3) The Contractor shall submit to the Contracting Officer* within ninety (90) days after the close of each rental period a written statement of the use made of the Facilities by the Contractor and the rental due the Government hereunder, and shall make available such records and data as are determined by the Contracting Officer* to be necessary to verify the information contained in the statement.

(4) If the Contractor fails to submit the statement within the prescribed ninety (90) day period, the Contractor shall be liable for the full rental for the period in question, subject to the exception stated in subparagraph (5) below.

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond the control and without the fault or negligence of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time in which to make such submission.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the Facilities to the performance of contracts and subcontracts of the Department of the _____ and shall not undertake any work involving the use of the Facilities which would interfere with the performance of existing Government contracts or subcontracts.

(d) Concurrently with the submission of the written statement prescribed by paragraph (b)(3) above, the Contractor shall pay the rental due the Government under this clause by check made payable to the Treasurer of the United States. Each check shall be mailed or delivered to the Contracting Officer.** Receipt and acceptance by the Government of the Contractor's checks pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder, unless the Contractor is notified in writing one hundred eighty (180) days following such receipt that the amount received is not regarded by the Government as the final amount due.

(e) If the Contractor uses any item of the Facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs. However, the Contracting Officer may waive the Contractor's liability for such unauthorized use if he determines that the Contractor exercised reasonable care to prevent such unauthorized use. In this latter event, the Contractor shall be liable only for the rental that would otherwise be due under this clause. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the Facilities or any other failure to perform this contract according to its terms.

EXHIBIT A

RENTAL RATES

The following rental rates are the rental rates referred to in the clause of this contract entitled "Use and Charges":

(i) For land and land preparation, buildings, building installations, and land installations other than those items specified in (ii) below, a fair and reasonable rental shall be established, based on sound commercial practice.

(ii) For machinery and production equipment of the type covered by the following classes of Production Equipment:

Federal Supply Classification Code Numbers	*Description*
3411 through 3419	Machine tools.
3441 through 3449	Secondary metal-forming Machinery.

The following rates shall apply:

Age of Equipment	*Monthly rental rate*
0 to 2 years	1¾%.
Over 2 to 6 years	1½%.
Over 6 to 10 years	1%.
Over 10 years	¾%.

The age of each item of the Facilities shall be based on the year in which it was manufactured, with an annual birthday on 1 January of each year thereafter. On 1 January following the date of manufacture, the item shall be considered one year old; and on each succeeding January 1st, it shall become one year older. For example, if an item of equipment is manufactured on 15 July 1958, it will be considered to be one year old on 1 January 1959, two years old on 1 January 1960, three years old on 1 January 1961, and so forth. The item of equipment will be considered "over two years old" on and after 1 January 1960, "over six years old" on and after 1 January 1964, and "over ten years old" on and after 1 January 1968.

(iii) For personal property and equipment not covered in (i) or (ii) above, a rental shall be established at not less than the prevailing commercial rate, if any; or, in the absence of such rate, not less than two percent (2%) per month for electronic test equipment and automotive equipment; and not less than one percent (1%) per month for all other property and equipment.

§ 7.702–13 Examination of records.

In accordance with the instructions in § 7.203–7, insert the clause set forth therein, except that the first sentence of paragraph (a)(1) shall be deleted and the following sentence inserted in lieu thereof.

The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract and to the use of and charges for the use of the Facilities (hereinafter collectively called "the records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services, and other costs and expenses of whatever nature, for which reimbursement is claimed under the provisions of this contract, all use of the Facilities, and all charges to be made for the use of the Facilities.

(Sept. 1964)

§ 7–702–14 Maintenance.

MAINTENANCE (SEPT. 1964)

(a) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the Facilities in accordance with sound industrial practice, in-

*In contracts of the Department of the Navy, insert "the Director, Contract Audit Division, Auditor General of the Navy, Washington, D.C." in lieu of "the Contracting Officer."

**In contracts of the Department of the Navy, insert "U.S. Navy Regional Finance Office, Washington, D.C.," in lieu of "the Contracting Officer".

cluding protection, preservation, maintenance, and repair of the Facilities, and with respect to equipment, normal parts replacement.

(b) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer* in writing a proposed normal maintenance program, including an appropriate maintenance records system, in sufficient detail to show its adequacy as a normal maintenance program. To the extent that the Contracting Officer* and the Contractor agree upon such a program, it shall become the normal maintenance obligation of the Contractor; and the Contractor shall carry it out in satisfaction of (i) his normal maintenance obligation under paragraph (a) above, and (ii) his obligation to maintain records under paragraph (e) below.

(c) The Contracting Officer may at any time specify, by written notice to the Contractor, a reduction in the work required by the then current normal maintenance obligation of the Contractor. After receipt of such notice, the Contractor shall perform only such work as is specified therein. If any such notice causes a decrease in the cost of performing the normal maintenance obligation, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such decrease.

(d) The Contractor shall perform such maintenance work as may be directed by the Contracting Officer in writing. To the extent that such work is in excess of the Contractor's then current normal maintenance obligation under paragraphs (a) through (c) above, such work shall be at Government expense. The Contractor shall notify the Contracting Officer in writing whenever, in accordance with sound industrial practice, the Facilities require any work in excess of such normal maintenance obligation.

(e) The Contractor shall keep records of the work done on the Facilities in performing his obligations under this clause, and shall afford the Government adequate opportunity to inspect all such records. The Contractor shall deliver such records to the Government or third persons, if so directed by the Contracting Officer, whenever the Facilities to which they relate are disposed of hereunder.

(f) The Contractor's obligation under this clause shall continue, with respect to each item of the Facilities, until such item is removed, abandoned, or otherwise disposed of, until expiration of the ninety (90) day period prescribed in paragraph (c) of the "Disposition of the Facilities" clause, or until the Contractor has discharged his obligations under this contract with respect to such items, whichever last occurs.

§ 7.702–15 Title.

TITLE (SEPT. 1964)

(a) Title to all Facilities and components furnished by the Government shall remain in the Government. Title to all Facilities and components purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to replacement parts furnished by the Contractor in carrying out his normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract; or (ii) commencement of processing or use of such property in the performance of this contract; or (iii) reimbursement of the cost thereof by the Government, whichever first occurs.

(b) Title to the Facilities shall not be affected by their incorporation in or attachment to any property not owned by the Government, nor shall any item of the Facilities be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall keep the Facilities free and clear of all liens and encumbrances, and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the Facilities.

(c) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange on premises furnished by the Government hereunder, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it is affixed to realty owned by the Government, unless it is so permanently attached to such realty as to be nonremovable without substantial injury, as determined by the Contracting Officer, to the property of the Government.

§ 7.702–16 Access.

ACCESS (SEPT. 1964)

The Government and any persons designated by it shall at all reasonable times have access to the premises where any of the Facilities are located.

§ 7.702–17 Property control.

PROPERTY CONTROL (SEPT. 1964)

The Contractor shall maintain adequate property control procedures and records, and a system of identification of the Facilities, in accordance with the provisions of Appendix B, "Manual for Control of Government Property in Possession of Contractors", or Appendix C, "Manual for Control of Government Property in Possession of Nonprofit Research and Development Contractors", of the Armed Services Procurement Regulation, as may be appropriate, in effect on the date of this contract.

§ 7.702–18 Liability for the facilities.

LIABILITY FOR THE FACILITIES (SEPT. 1964)

(a) The Contractor shall not be liable for any loss of or damage to the Facilities, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from:

(i) willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) all or substantially all of the Contractor's business; or

(B) all or substantially all of the Contractor's operations at any one plant or separate location, in which the Facilities are installed or located; or

(C) a separate and complete major industrial operation in connection with which the Facilities are used;

(ii) a failure, on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) to maintain and administer, in accordance with the clause of the contract entitled "Maintenance", a program for maintenance, repair, protection, and preservation of the Facilities, or

(B) to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Facilities;

(iii) a risk for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) a risk expressly required to be insured pursuant to paragraph (c) of this clause, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(b) If the Contractor transfers the Facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the Facilities as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the Facilities while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the Facilities in as good condition as when received, except for reasonable wear and tear or for the utilization of the Facilities in accordance with the provisions of the prime contract.

(c) Unless expressly directed in writing by the Contracting Officer*, the Contractor shall not include as an element of price or cost under any contract with the Government any amount on account of the cost of insurance (including self-insurance) against any form of loss or damage to the Facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances, if so approved) as the Contracting Officer* shall require or approve. Such insurance shall contain provision for thirty (30) days prior notice to the Contracting Officer*, in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited promptly with said Contracting Officer*. The Contractor shall, not less than thirty (30) days prior to the expiration of any insurance required by this contract to be carried by the Contractor on the Facilities, deliver to said Contracting Officer* a certificate of insurance or a certified copy of each renewal policy to cover the same risks. The insurance shall be in the name of the United States of America (Department of the _____), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

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*In contracts of the Department of the Navy, insert "the Cognizant Inspector" in lieu of "the Contracting Officer".

*In contracts of the Department of the Navy, insert "the Insurance Branch, Office of Naval Material, Department of the Navy, Washington, D.C." in lieu of "Contracting Officer".

"Loss, if any, under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the Treasurer of the United States of America.".

(d) Upon the happening of any loss or destruction of or any damage to the Facilities:

(i) the Contractor shall promptly notify the Contracting Officer thereof, and with the assistance of the Contracting Officer* shall take all reasonable steps to protect the Facilities from further damage, separate the damaged and undamaged Facilities, put all the Facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within thirty (30) days after the Contractor has determined that loss or destruction of, or damage to, the Facilities has occurred) a statement of—

(A) the lost, destroyed, and damaged Facilities;

(B) the time and origin of the loss, destruction, or damage;

(C) all known interests in commingled property of which the Facilities are a part; and

(D) the insurance, if any, covering any part of or interest in such commingled property; and

(ii) the Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged Facilities, or take such other action as the Contracting Officer may direct in writing.

The Contractor shall perform its obligations under this paragraph (d) at Government expense, except to the extent that the Contractor is responsible for such damage, loss, or destruction under the terms of this clause, and except as any damage, loss, or destruction is compensated by insurance.

(e) The Government is not obliged to replace or repair the Facilities which have been lost, destroyed, or damaged. In such event the right of the parties to an equitable adjustment in delivery or performance dates, or price, or both, and in any other contractual condition of the related procurement contracts affected thereby shall be governed by the terms and conditions of such contracts.

(f) Except to the extent of any loss or destruction of or damage to the Facilities for which the Contractor is relieved of liability, the Facilities shall be returned to the Government or otherwise disposed of under the terms of this contract in as good condition as when received by the Contractor, as subsequently improved or as they should have been subsequently improved under the terms of this contract, less ordinary wear and tear.

(g) In the event the Contractor is indemnified, reimbursed, or otherwise compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the Facilities, he, to the extent and as directed by the Contracting Officer:

(i) shall use the proceeds to repair, renovate, or replace the Facilities involved; or

(ii) pay such proceeds to the Government.

(h) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the Facilities, and upon the request of the Contracting Officer shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*In contracts of the Department of the Navy, insert "the Cognizant Inspector" in lieu of "the Contracting Officer".

§ 7.702–19 Insurance—liability to third persons.

In accordance with the instructions contained in § 7.203–22, insert the clause set forth therein. Wherever reference to the clause entitled "Allowable Cost, Fixed Fee and Payment" is made in this clause, insert in lieu thereof the following: "Allowable Cost and Payment". Wherever the phrase "performance under this contract" or "the performance of this contract" appears in such clause, insert in lieu thereof the following: "performance of work at Government expense under this contract".

§ 7.702–20 Indemnification of the Government.

INDEMNIFICATION OF THE GOVERNMENT (SEPT. 1964)

Except as provided in the "Insurance—Liability to Third Persons" clause, the Contractor shall indemnify and hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Facilities. However, the provisions of the Contractor's related procurement contracts shall govern the Government's assumption of liability for such claims arising out of or related to the performance of each such related procurement contract and involving the possession or use of the Facilities.

§ 7.702–21 Stop work orders.

STOP WORK ORDERS (SEPT. 1964)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by the Schedule for a period of ninety (90)* days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall, at Government expense, forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90)* days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

(i) cancel the Stop Work Order, or

(ii) terminate the work covered by such order as provided in the "Termination of Work" clause of this contract.

(b) If a Stop Work Order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery completion schedule, the estimated cost, or both, and the contract shall be modified in writing accordingly, if:

(i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage: *Provided*, That, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) If a Stop Work Order is not canceled and the work covered by such order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement.

(d) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any Stop Work Order under this clause. In no event shall the Government be liable to the Contractor for damages or loss of profits because of a Stop Work Order issued under this clause.

* This clause may provide for less than ninety days.

§ 7.702–22 Termination of work.

TERMINATION OF WORK (SEPT. 1964)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work in performance of the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services, or Facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) transferred title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government—

(A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect to the performance of, the work terminated by the Notice of Termination; and

(B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government;

(vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor—

(A) shall not be required to extend credit to any purchaser; and

(B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further*, That the proceeds of any such transfer or disposition shall be

applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining any item of reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, in effect as of the date of this contract, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VII of the Armed Services Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however*, That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(ii) there shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract; and

(iii) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of six percent (6%) per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(i) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by a Notice of Termination under this clause. In no event shall the Government be liable to the Contractor for damages or loss of profits by reason of a Notice of Termination issued pursuant to this clause.

§ 7.702–23 Notice of use of the facilities.

NOTICE OF USE OF THE FACILITIES (SEPT. 1964)

The Contractor shall notify the Contracting Officer in writing whenever:

(i) use of the Facilities for Government work is less than seventy-five percent (75%) of the total use of the Facilities;

(ii) non-Government use of Government-owned machinery and tools (Federal Supply Classification Code numbers 3411–3419 and 3441–3449) having a unit acquisition cost of $500 or more is expected to exceed twenty-five percent (25%) of the total use of such equipment in any rental period; or

(iii) a substantial part of the Facilities is no longer needed or usable for the purpose of performing Government contracts or subcontracts.

§ 7.702–24 Termination of the use of the facilities.

TERMINATION OF THE USE OF THE FACILITIES (SEPT. 1964)

(a) The Contractor may at any time, upon written notice to the Contracting Officer, terminate his authority to use any or all of the Facilities. Termination under this paragraph (a) shall not relieve the Contractor of any of his obligations or liabilities under any related procurement contract or subcontract affected thereby.

(b) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any or all of the Facilities. Except as otherwise provided in the "Failure to Perform" clause of this contract, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such notice.

§ 7.702–25 Period of this contract.

PERIOD OF THIS CONTRACT (SEPT. 1964)

If not previously terminated pursuant to the "Termination of the Use of the Facilities" clause of this contract, the use of the Facilities authorized under this contract shall terminate five (5) years after its effective date. Thereafter, if continued use of the Facilities by the Contractor is mutually desired, the parties shall enter into a new contract which shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the Facilities hereunder beyond this five (5) year period to permit the completion of then existing related procurement contracts and subcontracts.

A period of more than five years may be specified when authorized by the Secretary of the Department concerned or his designee, not lower than the head of a procuring activity. A period of less

than five years may be specified where appropriate.

§ 7.702–26 Disposition of the facilities.

DISPOSITION OF THE FACILITIES (SEPT. 1964)

(a) Except as the Contracting Officer otherwise directs, or until use of all the Facilities under this contract is terminated, the provisions of this clause shall not be applicable to those Facilities, the use of which has been terminated by the Contractor by a notice of termination under paragraph (a) of the "Termination of the Use of the Facilities" clause of this contract if:

(i) such Facilities comprise less than all of the Facilities in the possession of the Contractor, and

(ii) the Contracting Officer determines that continued retention of such Facilities would not interfere with the Contractor's operations.

(b) Within sixty (60) days after the effective date of any notice of termination given pursuant to the "Termination of the Use of the Facilities" clause of this contract, or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in form satisfactory to him, an accounting for all the Facilities covered by such notice.

(c) Within ninety (90) days after the Contractor accounts for any Facilities pursuant to paragraph (b) above, the Contracting Officer shall give written notice to the Contractor as to the disposition thereof, except as otherwise provided in paragraph (e) below. In effecting such disposition, the Government may either:

(i) abandon any such Facilities in place, and thereupon all obligations of the Government regarding such abandoned Facilities shall cease; or

(ii) require the Contractor to comply, at Government expense, with such written directions at the Contracting Officer may give with respect to—

(A) the preparation, protection, removal, or shipment of the affected Facilities;

(B) the retention or storage of the affected Facilities: *Provided*, That the Contracting Officer will not direct the Contractor to retain or store any items of Facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) the restoration of Government-owned land or buildings incident to the removal therefrom of Government-owned Facilities; and

(D) the sale of any affected Facilities in such manner, at such times, and at such price or prices, as may be approved by the Contracting Officer, except that the Contractor shall not be required to extend credit to any purchaser.

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed ninety (90) day period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected severable Facilities located in Contractor-owned buildings or property and store them elsewhere, at Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

(e) Nonseverable items of the Facilities or items of the Facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(f) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any Facilities with respect to which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (e) above.

(g) The Contractor shall, within a reasonable time after the expiration of the ninety (90) day period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

(h) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at Contractor's plant which may be damaged by the installation, use, removal, or storage of the Facilities, except any such damage as may be occasioned by the negligence of the Government, its agents, employees, or independent contractors. The Contractor agrees to indemnify the Government against all suits or claims arising out of the Government's failure to restore or rehabilitate any property at Contractor's plant or property of its subcontractors, except any such damage as may be occasioned by the negligence of the Government, its agents, employees, or independent contractors.

§ 7.702–27 Failure to perform.

FAILURE TO PERFORM (SEPT. 1964)

(a) Subject to the provisions of the clause hereof entitled "Excusable Delays", if the Contractor shall fail to perform this contract in accordance with its terms, the Contracting Officer shall give the Contractor written notice thereof. Thereafter, notwithstanding any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related procurement contract, to the extent that such equitable adjustment arises out of the Contractor's failure to perform or such reasonable remedial action as may be taken by the Contracting Officer predicated upon such failure.

(b) The failure of the Government to insist, in any one or more instances, upon the performance of any term or terms of this contract shall not be construed as a waiver or relinquishment of the Government's right to future performance of such term or terms, and the Contractor's obligation in respect to such future performance shall continue in full force and effect.

(c) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

§ 7.702–28 Disputes.

In accordance with the instructions in § 7.203–12, insert the contract clause set forth in § 7.103–12.

§ 7.702–29 Military security requirements.

In accordance with the instructions set forth in § 7.104–12, insert the contract clause set forth therein, deleting paragraphs (e) and (f), and substituting the following paragraphs (e) and (f).

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost, to the extent appropriate, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding (e) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. (Sept. 1964)

§ 7.702–30 Authorization and consent.

Insert the contract clause set forth in § 9.102–1 or § 9.102–2 of this chapter, as appropriate, except where performance and delivery are to be outside the United States, its possessions, or Puerto Rico.

§ 7.702–31 Notice and assistance regarding patent and copyright infringement.

Insert the contract clause set forth in § 9.104 of this chapter, except where both performance and delivery are to be outside the United States, its possessions, or Puerto Rico.

§ 7.702–32 Patent or proprietary rights in facilities.

PATENT OR PROPRIETARY RIGHTS IN FACILITIES (SEPT. 1964)

(a) Except as otherwise provided in this contract for specified patents, products or processes, if the use of the Facilities or any part thereof, as designed, constructed, or modified by the Contractor, is or will be substantially limited to products or processes subject to any patent or proprietary rights, the Contractor agrees:

(i) not to assert such patent or proprietary rights against the Government or any purchaser or transferee of the Facilities or any part thereof in connection with such use; or

(ii) to indemnify the Government or any purchaser or transferee of the Facilities or any part thereof against—

(A) liability for infringement of such patent or proprietary rights arising out of such use, or

(B) loss of the use of such Facilities for such products or processes resulting from injunctive action enforcing such patent or proprietary rights.

(b) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

§ 7.702–33 Subcontracts.

Insert the contract clause set forth in § 7.203–8 except that paragraphs (c) and (g) shall be appropriately modified to delete references to facilities and special tooling.

§ 7.702–34 Utilization of small business concerns.

Insert the contract clause set forth in § 1.707–3(a) of this chapter, except in contracts with foreign contractors which are to be performed outside of the United States, its possessions, and Puerto Rico.

§ 7.702–35 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 1.805–3(a) of this chapter, insert the contract clause set forth therein.

§ 7.702–36 Buy American Act.

In accordance with the requirements of § 6.104–5 of this chapter insert the contract clause set forth therein.

§ 7.702–37 Assignment of claims.

In accordance with the instructions in § 7.103–8, insert the contract clause set forth therein.

§ 7.702–38 Renegotiation.

In accordance with the requirements of § 7.103–13, insert the appropriate contract clause set forth therein.

§ 7.702–39 Officials not to benefit.

Insert the contract clause set forth in § 7.103–19.

§ 7.702–40 Gratuities.

In accordance with the requirements of § 7.104–16, insert the contract clause set forth therein.

§ 7.702–41 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103–20.

§ 7.702–42 Payment for overtime premiums.

In accordance with the requirements of § 12.102 of this chapter, insert the contract clause set forth in § 12.102–3(a).

§ 7.702–43 Convict labor.

In accordance with the requirements of § 12.202 of this chapter, insert the contract clause set forth in § 12.203 of this chapter.

§ 7.702–44 Equal opportunity.

In accordance with the requirements of § 12.802 of this chapter, insert the contract clause set forth therein.

§ 7.702–45 Walsh-Healey Public Contracts Act.

In accordance with the requirements of Subpart F, Part 12 of this chapter, insert the contract clause set forth in § 12.605 of this chapter.

§ 7.702–46 Work Hours Act of 1962—overtime compensation.

Insert the contract clause set forth in § 12.403–1(2) of this chapter.

§ 7.702–47 Price reduction for defective cost or pricing data.

In accordance with the requirements of § 7.104–29, insert the appropriate clause set forth therein.

§ 7.702–48 Audit and records.

In accordance with the requirements of § 7.104–41(c), insert the clause set forth therein except that paragraph (a) thereof shall be modified to read as follows:

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (i) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract and (ii) the use of, and charges for the use of, the Facilities. The foregoing constitute "records" for the purposes of this clause. (SEPT. 1964)

§ 7.702–49 Subcontractor cost and pricing data.

In accordance with the requirements of § 7.104–42, insert the appropriate clause set forth therein.

§ 7.702–50 Competition in subcontracting.

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

§ 7.703 Required clauses for facilities acquisition contracts.

The following contract clauses shall be inserted in all facilities acquisition contracts.

§ 7.703–1 Definitions.

Insert the contract clause set forth in § 7.103–1, together with the additional definitions set forth in § 7.702–1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this subchapter.

§ 7.703–2 Facilities to be provided.

Insert the contract clause set forth in § 7.702–2.

§ 7.703–3 Late delivery, diversion, and substitution.

Insert the contract clause set forth in § 7.702–3.

§ 7.703–4 Changes.

Insert the contract clause set forth in § 7.702–4.

§ 7.703–5 Representations and warranties.

Insert the contract clause set forth in § 7.702–5.

§ 7.703–6 Inspection.

Insert the contract clause set forth in § 7.702–6.

§ 7.703–7 Excusable delays.

Insert the contract clause set forth in § 8.708 of this chapter, except that the reference in the last sentence thereof to the clause entitled "Termination" shall be changed to read "Termination of Work".

§ 7.703–8 Government bills of lading.

Insert the contract clause set forth in § 7.702–9.

§ 7.703–9 Allowable cost and payment.

(a) In accordance with the instructions in § 7.702–10, insert the contract clause set forth therein.

(b) If desired, the following additional provision may be added after the first sentence of paragraph (d) of this clause.

After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost, or one hundred thousand dollars ($100,000) whichever is less, shall have been set aside.

(c) If desired, the following additional paragraph may be added to this clause as paragraph (f), in which case paragraph (f) of the clause set forth in § 7.702–10 shall be redesignated paragraph (g).

(f) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all relevant provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (g) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of (i) all work under this contract, or (ii) such work involving acquisition, construction, or installation of the Facilities as may then be specified in the Schedule, but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

§ 7.703–10 Limitation of cost.

Insert the contract clause set forth in § 7.702–11.

§ 7.703–11 Examination of records.

In accordance with the instructions in § 7.203–7, insert the contract clauses set forth therein, except that the first sentence of paragraph (a)(1) shall be deleted and the following sentence inserted in lieu thereof:

The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. (Sept. 1964)

§ 7.703–12 Title.

Insert the contract clause set forth in § 7.702–15, except that the third sentence of paragraph (a) shall be deleted.

§ 7.703–13 Access.

Insert the contract clause set forth in § 7.702–16.

§ 7.703–14 Liability for the facilities.

Insert the contract clause set forth in § 7.702–18, except that the phrase "in accordance with the clause of the contract entitled 'Maintenance'," in paragraph (a)(ii) shall be deleted, and the phrase "in accordance with sound industrial practice" inserted in lieu thereof.

§ 7.703–15 Insurance—liability to third persons.

In accordance with the instructions contained in § 7.702–19, insert the contract clause set forth in § 7.203–22.

§ 7.703–16 Indemnification of the Government.

Insert the contract clause set forth in § 7.702–20.

§ 7.703–17 Stop work orders.

Insert the contract clause set forth in § 7.702–21.

§ 7.703–18 Termination of work.

Insert the contract clause set forth in § 7.702–22.

§ 7.703–19 Failure to perform.

Insert the contract clause set forth in § 7.702–27.

§ 7.703–20 Disputes.

In accordance with the instructions of § 7.203–12, insert the contract clause set forth in § 7.103–12.

§ 7.703–21 Military security requirements.

In accordance with the instructions set forth in § 7.702–29, insert the contract clause called for therein.

§ 7.703–22 Authorization and consent.

Insert the contract clause set forth in § 9.102–1 or § 9.102–2 of this chapter, as appropriate, except where performance and delivery are to be outside of the United States, its possessions, or Puerto Rico.

§ 7.703–23 Notice and assistance regarding patent and copyright infringement.

In accordance with the instructions contained in § 7.702–31, insert the contract clause set forth in § 9.104 of this chapter.

§ 7.703–24 Patent or proprietary rights in facilities.

Insert the contract clause set forth in § 7.702–32.

§ 7.703–25 Subcontracts.

Insert the contract clause set forth in § 7.203–8, except that subparagraphs (c) and (g) shall be appropriately modified to delete references to facilities and special tooling.

§ 7.703–26 Utilization of small business concerns.

Insert the contract clause set forth in § 1.707–3(a) of this chapter, except in those contracts entered into with foreign contractors which are to be performed outside the United States, its possessions, or Puerto Rico.

§ 7.703–27 Utilization of concerns in labor surplus areas.

In accordance with the requirements set forth in § 1.805–3(a) of this chapter, insert the contract clause set forth therein.

§ 7.703–28 Buy American Act.

In accordance with the requirements in § 6.104–5 of this chapter, insert the contract clause set forth therein.

§ 7.703–29 Assignment of claims.

In accordance with the instructions in § 7.103–8, insert the contract clause set forth therein.

§ 7.703–30 Renegotiation.

In accordance with the requirements of § 7.103–13, insert the appropriate contract clause set forth therein.

§ 7.703–31 Officials not to benefit.

Insert the contract clause set forth in § 7.103–19.

§ 7.703–32 Gratuities.

In accordance with the requirement of § 7.104–16, insert the contract clause set forth therein.

§ 7.703–33 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103–20.

§ 7.703–34 Payment for overtime premiums.

In accordance with the requirements of § 12.102 of this chapter, insert the contract clause set forth in § 12.102–3(a).

§ 7.703–35 Convict labor.

In accordance with the requirements of § 12.202 of this chapter, insert the contract clause set forth in § 12.203 of this chapter.

§ 7.703–36 Equal opportunity.

In accordance with the requirements of § 12.802 of this chapter, insert the contract clause set forth therein.

§ 7.703–37 Walsh-Healey Public Contracts Act.

In accordance with the requirements of Subpart F, Part 12 of this chapter, insert the contract clause set forth in § 12.605 of this chapter.

§ 7.703–38 Work Hours Act of 1962—Overtime compensation.

Insert the contract clause set forth in § 12.403–1(2) of this chapter.

§ 7.703–39 Supersedure.

SUPERSEDURE (SEPT. 1964)

When the acquisition, construction, or installation of the Facilities called for by this contract, or any usable increment thereof, is completed and accepted by the Government, such Facilities shall thereafter be subject to the provisions of the related facilities contract by which the use of such items by the Contractor is authorized.

§ 7.703–40 Price reduction for defective cost or pricing data.

In accordance with the requirements of § 7.104–29, insert the appropriate clause set forth therein.

§ 7.703–41 Audit and records.

In accordance with the requirements of § 7.104–41(c), insert the appropriate clause set forth therein except that paragraph (a) thereof shall be modified to read as follows:

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (i) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract and (ii) the use of, and charges for the use of, the Facilities. The foregoing constitute "records" for the purposes of this clause. (Sept. 1964)

§ 7.703–42 Subcontractor cost and pricing data.

In accordance with the requirements of § 7.104–42, insert the appropriate clause set forth therein.

§ 7.703–43 Competition in subcontracting.

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

§ 7.704 Required clauses for facilities use contracts.

The following clauses shall be inserted in all facilities use contracts.

§ 7.704–1 Definitions.

Insert the contract clause set forth in § 7.103–1, together with the additional definitions set forth in § 7.702–1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this subchapter.

§ 7.704–2 Use and charges.

Insert the contract clause set forth in § 7.702–12.

§ 7.704–3 Allowable cost and payment.

ALLOWABLE COST AND PAYMENT (SEPT. 1964)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract, which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer* to be allowable in accordance with (i) Section XV, Part 5, of the Armed Services Procurement Regulation as in effect on the date of this contract; and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

§ 7.704–4 Limitation of cost.

Insert the contract clause set forth in § 7.702–11.

§ 7.704–5 Examination of records.

In accordance with the instructions in §7.702–13, insert the contract clause set forth in § 7.203–7.

§ 7.704–6 Location of the facilities.

Insert the contract clause set forth in § 7.702–8.

§ 7.704–7 Maintenance.

Insert the contract clause set forth in § 7.702–14.

§ 7.704–8 Inspection.

Insert the contract clause set forth in §7.702–6.

§ 7.704–9 Title.

Insert the contract clause set forth in § 7.702–15, except that the following paragraph (a) shall be substituted for the corresponding paragraph in that clause:

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by

*In contracts of the Department of the Navy, insert "the Director, Contract Audit Division, Auditor General of the Navy, Washington, D.C." in lieu of "the Contracting Officer".

the Contractor in carrying out its normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities. (Sept. 1964)

§ 7.704–10 Access.

Insert the contract clause set forth in § 7.702–16.

§ 7.704–11 Property control.

Insert the contract clause set forth in § 7.702–17.

§ 7.704–12 Representations and warranties.

Insert the contract clause set forth in § 7.702–5.

§ 7.704–13 Government bills of lading.

Insert the contract clause set forth in § 7.702–9.

§ 7.704–14 Liability for the facilities.

Insert the contract clause set forth in § 7.702–18.

§ 7.704–15 Indemnification of the Government.

Insert the contract clause set forth in § 7.702–20, deleting the phrase "Except as provided in the 'Insurance—Liability to Third Persons' clause" in the first sentence.

§ 7.704–16 Notice of use of the facilities.

Insert the contract clause set forth in § 7.702–23.

§ 7.704–17 Termination of the use of the facilities.

Insert the contract clause set forth in § 7.702–24.

§ 7.704–18 Period of this contract.

Insert the contract clause set forth in § 7.702–25.

§ 7.704–19 Disposition of the facilities.

Insert the contract clause set forth in § 7.702–26.

§ 7.704–20 Failure to perform.

Insert the contract clause set forth in § 7.702–27, except that the phrase "Subject to the provisions of the clause hereof entitled 'Excusable Delays'," shall be deleted in paragraph (a).

§ 7.704–21 Disputes.

In accordance with the instructions in § 7.203–12, insert the contract clause set forth in § 7.103–12.

§ 7.704–22 Military security requirements.

In accordance with the instructions in § 7.702–29, insert the contract clause called for therein.

§ 7.704–23 Assignment of claims.

In accordance with the instructions in § 7.103–8, insert the contract clause set called for therein.

§ 7.704–24 Officials not to benefit.

Insert the contract clause set forth in § 7.103–19.

§ 7.704–25 Gratuities.

In accordance with the requirement of § 7.104–16, insert the contract clause set forth therein.

§ 7.704–26 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103–20.

§ 7.704–27 Payment for overtime premiums.

In accordance with the requirements of § 12.102 of this chapter, insert the contract clause set forth in § 12.102–3(a).

§ 7.704–28 Convict labor.

In accordance with the requirements of § 12.202 of this chapter, insert the contract clause set forth in §12.203 of this chapter.

§ 7.704–29 Equal opportunity.

In accordance with the requirements of § 12.802 of this chapter, insert the contract clause set forth therein.

§ 7.704–30 Work Hours Act of 1962—overtime compensation.

Insert the contract clause set forth in § 12.403–1(2) of this chapter.

§ 7.704–31 Supersedure.

SUPERSEDURE (SEPT. 1964)

(a) Facilities heretofore provided to the Contractor pursuant to the contracts specified in the Schedule shall become subject to the terms of this contract upon its effective date. The terms of the contracts by which such Facilities may have been provided to the Contractor are hereby superseded with respect to such Facilities, except for rights and obligations which may have accrued under such other contract prior to the effective date hereof.

(b) Each item of Facilities hereafter provided to the Contractor under any contract which so specifies shall become subject to the terms of this contract upon the completion of its construction, acquisition, and installation, or upon its availability for use, whichever first occurs, except as otherwise provided in the contract or other document by which such Facilities are provided to the Contractor.

§ 7.704–32 Price reduction for defective cost or pricing data.

In accordance with the requirements of § 7.104–29, insert the appropriate clause set forth therein.

§ 7.704–33 Audit and records.

In accordance with the requirements of § 7.104–41(c), insert the appropriate clause set forth therein except that paragraph (a) thereof shall be modified to read as follows:

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (i) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract and (ii) the use of, and charges for the use of, the Facilities. The foregoing constitute "records" for the purposes of this clause. (Sept. 1964)

§ 7.704–34 Subcontractor cost and pricing data.

In accordance with the requirements of § 7.104–42, insert the appropriate clause set forth therein.

§ 7.704–35 Competition in subcontracting.

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

§ 7.705 Clauses to be used when applicable.

§ 7.705–1 Rights in data.

In accordance with the requirements of Subpart B of Part 9 of this chapter, insert the appropriate clause set forth in § 9.203 of this chapter with appropriate additional or alternate paragraphs as prescribed by the instructions set forth therein. Particular attention shall be given to obtaining data where necessary to make possible the use or disposal of facilities.

§ 7.705–2 Filing of patent applications.

In accordance with the requirements of § 9.106 or § 9.106–1 of this chapter, insert either of the contract clauses set forth therein, as appropriate.

§ 7.705–3 Priorities, allocations, and allotments.

In accordance with the requirements of § 1.307–2 of this chapter, insert the clause set forth in § 7.104–18.

§ 7.705–4 Transfer of title to the facilities.

In accordance with the instructions contained in § 4.214–4 of this chapter, the following clause may be inserted in facilities contracts.

TRANSFER OF TITLE TO THE FACILITIES (SEPT. 1964)

Notwithstanding the provisions of the clause of this contract entitled "Title", the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided*, That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this clause. Upon the transfer of title to equipment under this clause, such equipment shall cease to be Government property.

§ 7.705–5 Labor standards for construction work.

Except as provided in §§ 12.403–2, 12.403–3, and 12.403–4 of this chapter, every construction contract, as this term is defined in § 12.402 of this chapter, shall include the following.

LABOR STANDARDS FOR CONSTRUCTION WORK (SEPT. 1964)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall, prior to commencing the work, request the determination of the Contracting Officer as to the applicability of the Davis-Bacon and Copeland Acts and shall not perform any of said items hereunder without receipt of such determination.

(b) The Contractor shall, in the performance of items of work so determined to be subject to the Davis-Bacon Act, comply with the following clauses set forth in 12–403.1 of the Armed Services Procurement Regulation in effect as of the date of this contract:

(i) "Davis-Bacon Act (40 U.S.C. 276a–276a–7)",
(ii) "Apprentices",
(iii) "Payroll Records and Payrolls",
(iv) "Copeland ('Anti-Kickback') Act—Nonrebate of Wages",
(v) "Withholding of Funds to Assure Wage Payment", and
(vi) "Subcontracts—Termination".

(c) Upon determination that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, the Contractor shall submit a request for a predetermination of the prevailing wage rates to be made applicable to such work. Upon receipt of such request, the Contracting Officer shall, as soon as possible, obtain a predetermination of the applicable prevailing wage rates and publish such rates and incidental instructions in numbered exhibits to this contract. Upon publication thereof, such exhibits shall be considered the wage determination decision of the Secretary of Labor referred to in paragraph (a) of the "Davis-Bacon Act" clause. Each such exhibit shall indicate to what work the rates set forth therein shall apply, including the period of time within which subcontracts subject to such rates may be issued.

§ 7.705–6 Buy American Act—construction contracts.

In accordance with the requirements of § 6.204–5 of this chapter, every contract for construction shall include the contract clause set forth therein.

§ 7.705–7 Improvements to buildings or land owned by the government.

Where necessary to assure that Government buildings or land will not be modified in a manner detrimental to the interests of the Government, the following clause shall be inserted.

IMPROVEMENTS TO BUILDINGS OR LAND OWNED BY THE GOVERNMENT (SEPT. 1964)

(a) The Contractor shall not construct or make, at its expense, any fixed improvement to, or structural alteration in the nature of, buildings or land owned or leased by the Government, without prior written approval of the Contracting Officer.

(b) For the purposes of paragraph (a), the terms "fixed improvement" and "structural alteration" mean any improvement to or alteration in the nature of the buildings or land which, after completion, cannot be removed without substantial loss of value or damage to the premises. Such terms do not include foundations for production equipment.

§ 7.705–8 Patent rights.

In all Facilities contracts in which research or development or both will be involved, insert one of the clauses set forth in § 9.107–5 or § 9.107–6 of this chapter, with additional or alternate paragraphs as prescribed therein, except that the percentage amount specified to be withheld under paragraph (g) of the clause set forth in § 9.107–5(a) and paragraph (f) of the clause set forth in § 9.107–5(b) may be changed from "ten percent (10%)" to "one percent (1%)". In Facilities contracts with educational or nonprofit institutions, paragraph (g) of the clause set forth in § 9.107–5(a) and paragraph (f) of the clause set forth in § 9.107–5(b) may be omitted.

§ 7.705–9 Required source for jewel bearings.

In accordance with the requirements of § 1.315 of this chapter, insert the clause set forth therein.

§ 7.705–10 Changes to make-or-buy program.

In accordance with the requirements of § 3.902–4 of this chapter, insert the clause set forth therein.

§ 7.705–11 Interest.

In accordance with the requirements of §§ 163.118 and 163.119 of this chapter, insert the clause set forth in § 163.118.

§ 7.705–12 Negotiated overhead rates.

Where negotiated overhead rates are to be used in contracts with concerns other than educational institutions pursuant to Subpart G, Part 3 of this chapter, insert the contract clause set forth in § 3.704–1 of this chapter except that the reference to "Part 2 of Section XV" in paragraph (c) thereof shall be changed to "Part 5 of Section XV". Where negotiated overhead rates (postdetermined or predetermined) are to be used in contracts with educational institutions, pursuant to that subpart, insert the appropriate contract clause set forth in § 3.704–2 of this chapter except that reference to "Section XV, Part 3" in paragraph (c) of these two clauses shall be changed to "Section XV, Part 5".

§ 7.705–13 Advance payments.

When advance payments are to be made in accordance with Subpart D, Part 163 of this chapter, insert the appropriate clause as set forth in § 163.64–2.

PART 8—TERMINATION OF CONTRACTS

13. Section 8.502–2 is revised to read as follows:

§ 8.502–2 Return of property to suppliers.

Contractors are authorized and shall be encouraged to return allocable quantities of contractor-acquired property to suppliers for full credit less the supplier's normal restocking charge or 25 percent of cost, whichever is less. Contractors shall not include in their settlement proposals the cost of such property returned to suppliers in accordance with this section. Contractors may include in their settlement proposals as "other costs" the transportation handling and restocking charges with respect to the property so returned.

PART 9—PATENTS, DATA, AND COPYRIGHTS

14. Sections 9.100 and 9.102 are revised; the introductory text of § 9.102–1 is revised; and the introductory text of § 9.102–2 is revised, as follows:

§ 9.100 Scope of subpart.

This subpart prescribes contract clauses and instructions which define and implement the policy of the Department of Defense with respect to—

(a) Inventions made in the course of experimental, developmental, or research work performed under Government contracts;

(b) Patent infringement liability resulting from work performed by or for the Government;

(c) Royalties payable in connection with the performance of Government contracts;

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

§ 9.102 Authorization and consent.

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

(b) Any provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement shall not be included in a contract.

(c) An authorization and consent clause shall not be used in contracts where both complete performance and delivery are to be outside the United States, its possessions, or Puerto Rico.

§ 9.102–1 Authorization and consent in contracts for supplies.

The contract clause set forth below may be included in all contracts for supplies (including construction work), except:

(a) When prohibited by § 9.102(c); or

(b) In contracts for experimental, developmental, or research work in which the clause of § 9.102–2 is required.

* * * * *

§ 9.102–2 Authorization and consent in contracts for research or development.

Greater latitude in the use of patented inventions may be necessary in a contract for experimental, developmental, or research work than in a contract for supplies. Unless prohibited by § 9.102 (c), the clause set forth below shall be included in all contracts calling exclusively for experimental, developmental, or research work, and may be included in contracts calling for both supplies and experimental, developmental, or research work where the latter work is a primary purpose of the contract. In all other contracts for both supplies and experimental, developmental, or research work, the Authorization and Consent clause of § 9.102–1 shall be used. If the clause set forth below is included in a contract, the clause in § 9.102–1 shall not be included.

* * * * *

15. Sections 9.103 and 9.103–1 are revised; § 9.103–2 is revoked; and § 9.103–3 is revised, to read as follows:

§ 9.103 Patent indemnification of Government by contractor.

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

(a) Where the Authorization and Consent clause of 9–102.2 applicable to research and development contracts is authorized, except that in contracts calling also for supplies of the kind described above, a patent indemnity clause may be used with respect to such supplies;

(b) Where the contract is for supplies which clearly are not or have not been sold or offered for sale to the public in the commercial open market. However, even in the foregoing instance, a patent indemnity clause may be included where (1) in the case of contracts to be awarded by formal advertising it is desired to obtain an indemnity as to specific components or spare parts so sold or offered for sale, in which case the clause shall be modified pursuant to § 9.103–1(b); or (2) in the case of contracts to be awarded either by formal advertising (see § 2.407–8 of this chapter) or negotiation, a patent owner contends that the prospective procurement would infringe his patent and the low bidder or offeror is willing to indemnify the Government as to such patent either (i) without increase in price on the basis that the patent is invalid or not infringed, or (ii) for other good reasons;

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

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

§ 9.103–1 Patent indemnification in formally advertised contracts—commercial status predetermined.

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

PATENT INDEMNITY (SEPT. 1964)

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

(b) Where a supply contract calls in part for specific components or spare parts which normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, or such items with relatively minor modifications, the Patent Indemnity clause of paragraph (a) of this section shall be modified by adding to the end of the clause either of the following sentences:

The foregoing shall not apply to the following:
(Specifically identify the items to be excluded from the Patent Indemnity clause) (Sept. 1964)

or

The foregoing shall apply only to the following:
(Specifically identify the items to which the Patent Indemnity clause applies) (Sept. 1964)

§ 9.103–2 Patent indemnification in formally advertised contracts—commercial status not predetermined. [Revoked]

§ 9.103–3 Patent indemnification in negotiated contracts.

A patent indemnity clause is not required to be included in negotiated contracts, but may be included, first, in negotiated construction contracts, second, as authorized in § 9.103(b)(2), and third, in negotiated contracts for supplies where such supplies normally are or have been sold or offered for sale by the contractor to the public in the commercial open market, or are such supplies with relatively minor modifications made thereto. Ordinarily, the contracting officer, in consultation with the contractor, should be able to determine whether the supplies being purchased normally are on sale or have been sold or offered for sale by the contractor to the public in the commercial open market.

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

(b) Where a supply contract calls in part for specific components or spare parts which normally are or have been sold or offered for sale by the contractor to the public in the commercial open market, or such items with relatively minor modifications, the patent indemnity clause of § 9.103–1(a) shall be modified by adding to the end of the clause either of the following sentences:

The foregoing shall not apply to the following:
(Specifically identify the items to be excluded from the Patent Indemnity clause) (SEPT. 1964)

or

The foregoing shall apply only to the following:
(Specifically identify the items to which the Patent Indemnity clause applies) (SEPT. 1964)

16. The introductory text of § 9.103–4 is revised; the contract clause in § 9.104 is revised; and the introductory text of § 9.107–5(c) is revised, to read as follows:

§ 9.103–4 Waiver of indemnity by the Government.

In the event that it is desired to exempt one or more specified United States patents from the patent indemnity clause of § 9.103–1, authority shall first be obtained from the Secretary concerned or his authorized representative, and the following clause shall be included in the contract, in addition to the patent indemnity clause:

* * * * *

§ 9.104 Notice and assistance.

* * * * *

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (SEPT. 1964)

The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.

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

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

§ 9.107–5 Clauses for domestic contracts.

* * * * *

(c) *Patent rights (deferred) clause.* Where the contracting officer has determined that the proposed contract comes within § 9.107–4(d), he shall include in the contract the Patent Rights (Title) clause set forth in paragraph (a) of this section, except that the name of the clause shall be changed to "Patent Rights (Deferred)" and paragraph (h) of that clause shall be replaced by the following paragraph (h). The clause, when so modified, differs from the clause set forth in paragraph (a) of this section only in the circumstances under which the Government may permit the contractor to acquire greater rights than the license.

* * * * *

PART 12—LABOR

17. Sections 12.404–2, 12.404–8, 12.404–9, and 12.501 are revised to read as follows:

§ 12.404–2 Wage determinations.

(a) *Requests for.* Requests for the determination of wage rates by the Secretary of Labor shall be submitted on Department of Labor Form DB–11 in accordance with the instructions contained in 29 CFR 5.3. Requests should ordinarily be submitted at least 30 calendar days before required for the advertisement or negotiation of the contract for which the determination is sought.

(b) *Limitations.* Wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness, it is void. If it appears that a wage determination may expire between bid opening and award, a new wage determination should be requested sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award and after bid opening, the Solicitor of Labor upon a written finding to that effect by the Secretary of the Department concerned in individual cases may extend the expiration date of a determination whenever he finds it necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business.

(c) *Modifications.* (1) Modifications by the Secretary of Labor of an original wage determination shall be made part of the proposed contract if received prior to the award of the contract: *Provided,* That, in a formally advertised procurement, any modification received by the Department concerned less than ten calendar days before the opening of bids may be disregarded. Therefore, all copies of modifications and determinations shall be time-date stamped to show when they were first received by the Department.

(2) Pursuant to subparagraph (1) of this paragraph, if a new determination or a modification is received by the Department ten or more days before bid opening, the contracting officer shall:

(i) If the modification or new determination is received by the contracting officer before the bid opening, notify bidders of the new rates by an amendment to the invitation for bids and extend the date of opening if necessary; or

(ii) If the modification or new determination is received by the contracting officer after bid opening, use the following procedure:

(*a*) If there are no changes to applicable wage rates or if there are increases which the low responsible, responsive bidder will accept without change in his bid price, award shall be made to such low bidder: *Provided,* That written acceptance of the new rates is obtained from such low bidder and is attached to the bid and that the new rates are made a part of the contract.

(*b*) If any applicable wage rate is decreased or if there is any increase which the low responsible, responsive bidder will not accept without change in his bid price, award will not be made until the procurement has been readvertised using a correct, current determination.

(d) *Posting.* The contracting officer shall ascertain that a copy of the wage determination is kept posted at the site of the work in a prominent place where it can be easily seen by the workers.

§ 12.404–8 Enforcement reports.

(a) Where underpayments total $500 or more, or are willful, the Department concerned shall furnish to the Department of Labor, as soon as practicable, a detailed enforcement report. Such reports shall include a statement of the findings as to the violations and information as to restitution made, payment deductions, contract terminations, and the names and addresses of the workers, contractors, and subcontractors concerned.

(b) Where underpayments total less than $500 and are nonwillful, and where restitution has been effected and future compliance assured, no report need be furnished to the Department of Labor, unless the Department of Labor has expressly requested that the investigation be made. In the latter case, the Department concerned shall submit a factual summary report in accordance with 29 C.F.R. 5.7(a)(1).

(c) Where there is substantial evidence that violations are willful and in breach of the False Affidavits Act (18 U.S.C. 1001) or other criminal statute, the matter shall be forwarded to the Attorney General for prosecution and the Secretary of Labor shall be informed of such action.

§ 12.404–9 Suspensions and deductions of contract payments.

In the event of failure or refusal to pay all or any part of the wages due workers, the contracting officer may suspend further contract payments to the contractor in amounts equal to such unpaid wages and liquidated damages which may be due until either restitution has been made directly by the contractor or subcontractor concerned or deductions against payment vouchers are made as provided below. If such failure or refusal appears continuing and willful, or in the event of any other failure or refusal to comply with contract, statutory, and regulatory requirements, the contracting officer may suspend all future contract payments to the contractor until such violations have ceased. If restitution is not made directly by the contractor or subcontractor within a reasonable time, or, in any event, prior to final payment under the contract, the contracting officer shall submit with the contractor's payment voucher or vouchers a "Schedule of Deductions from Payments to Contractors (Act of August 30, 1935)" on Standard Form 1093 and a statement of the amount to be withheld as liquidated damages. These amounts shall be deducted from the payments made to the contractor, and the amounts shown to be due workers shall be deposited in the Treasury in accordance with Departmental procedures.

§ 12.501 Safety and health regulations.

The Secretary of Labor has promulgated Safety and Health Regulations for Ship Repairing and Shipbuilding pursuant to the authority of Public Law 85–742, 72 Stat. 835 (approved August 23, 1958) amending section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941). These regulations are set forth in Title 29, Code of Federal Regulations, Subtitle B, Part 1501 and Part 1502.

PART 13—GOVERNMENT PROPERTY

18. A note is added to Subpart F, following the subpart heading, to read as follows:

Subpart F—Use of Government-Owned Industrial Facilities on Work Other Than for a Military Department

NOTE: The rental rates and rental applicability provisions set forth in §§ 13.601 and 13.603 should be disregarded, and the provisions contained in Exhibit A of the contract clause in § 7.702–12 used in lieu thereof.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

19. Section 15.205–10 is revised to read as follows:

§ 15.205–10 Employee morale, health, and welfare costs and credits.

Reasonable costs of morale, health, and welfare activities, such as house publications, health or first aid clinics, recreational activities, and employee counseling services, incurred, in accordance with the contractor's established practice or custom in the industry or area, for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities shall be credited to the costs thereof unless such income has been irrevocably set over to employee welfare organizations.

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

20. In § 30.2, item 203 is amended by revising the heading and paragraph (b);

item 206 is revised; item 301(b) is revised; item 304.1 is revised; new subdivision (vi) is added to item 304.7(b); and a new item 304.8 is added, as follows:

§ 30.2 Appendix B—Manual for control of Government property in possession of contractors.

* * * * *

203 *Duties and responsibilities of Property Administrators.* * * *

(b) He shall, as the authorized representative of the contract administrator or administrators, insure compliance with the contract requirements relative to Government property and insure fulfillment of all obligations imposed by this Manual. Except as may be provided pursuant to B–304.1(e), he shall at the inception of each contract review and approve in writing the contractor's property control system, except that where the contractor has a number of contracts, the property administrator may perform such review and give such approval not less often than six months.

* * * * *

206 *Segregation or commingling of Government property and contractor's property.* Government property will be segregated and kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled:

(i) When the Government property is special tooling or plant equipment which is clearly identified and recorded as Government property,

(ii) When approved by the property administrator in connection with research and development contracts,

(iii) When material is included in a multicontract cost and material control system approved in accordance with B–304.1(e), or

(iv) When otherwise approved by the property administrator.

301 *General.* * * *

(b) The contractor's property control system shall be reviewed and approved in writing by the property administrator either at the inception of each contract or periodically, as provided in B–203(b). In appropriate cases, the review will include a determination as to whether a multicontract cost and material control system would be in the interests of the Government. Any necessary corrective action will be required of the contractor prior to approval. Such corrective action will normally be effected by the property administrator through mediation with the contractor. Where corrective action would involve substantial increased costs or where agreement as to the corrective action is not reached through mediation, the differences will be referred to the contract administrator.

* * * * *

304.1 *Records of materials.* All Government material furnished to the contractor, as well as all other material, title to which has passed to the Government, by reason of allocation from contractor-owned stores, or by reason of purchase by the contractor for direct charge to a Government contract, or otherwise, shall be recorded in accordance with the contractor's property control system, as follows:

(a) *Contractor's property control system.* Except as provided in (d) and (e) below, the contractor's property control system shall be such as to provide the following information:

(i) Contract number.

(ii) Nomenclature or description of item.

(iii) Quantity received.

(iv) Quantity issued.

(v) Balance on hand.

(vi) Posting reference.

(vii) Date received or issued.

(viii) Unit price.

(ix) Location.

(x) Disposition action taken.

(b) *Consolidated stock record.* Where a contractor has more than one Government contract under which Government material is provided, a consolidated record for materials may be authorized, *provided* the total quantity of any item is allocated to each contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(c) *Custodial records.* Custodial records shall be maintained for tool crib items, guard force items, protective clothing and other items issued for the use of individuals in the performance of their work under the contract.

(d) *Use of receipt and issue documents.* Based on a determination of the property administrator in accordance with B–301(b), the contractor may maintain in lieu of "stock records" a file of appropriately cross-referenced documents representing receipt, issue, and adjustments of Government-provided material in performance of a Government contract. Such determination shall be consistent with generally accepted accounting practices and a low frequency of receipt and issue of the items of material specified, i.e., usually issued directly upon receipt). Accordingly:

(i) The property administrator may authorize this method of property control for Government-provided material, including but not limited to items used in manufacturing or maintenance, office supplies, etc.; and

(ii) This method of property control may be used for research and development contracts.

(e) *Multicontract cost and material control*—(1) *Description and scope.* A multicontract cost and material control system constitutes a modification of the requirements for physical identification of Government material and substitutes therefor a system of financial accounting. The system operates as follows:

(i) The contractor may acquire, purchase, requisition, receive, store, and issue like items of material for the total requirements of all contracts included in the system without identifying the material to each contract.

(ii) The contractor may commingle, during all stages of contract performance, Government-owned and contractor-owned material and work in process, which was furnished, acquired, or produced for all Government contracts of any type covered by the system, without physical segregation or identification to individual contracts.

(iii) In lieu of physical segregation and identification to individual contracts, periodic calculation of requirements and distribution of costs to all contracts permits the allocation of material costs to products delivered. This system, by reflecting the materials expended to perform each contract at any stage in production, permits usage analysis to determine reasonableness of consumption and expenditure of Government material prescribed in B–203(f).

(iv) The system may appropriately include all Government contracts of any type which involve common repetitive operations.

(v) The system does not require commingling of all common materials of all contracts included. For example, items of Government-furnished material of high value or in short supply may be excluded from commingling and reserved for use in performance of the contract under which furnished.

(vi) Notwithstanding B–207.1, physical inventories of material in stores included in the system (other than work in process) will be taken by the contractor at least annually, price extended, and reconciled to the quantitative balance for each line item, and adjustments recorded in the stock record and financial inventory control accounts. Such physical inventories and adjustments shall be reviewed by and are subject to the approval of the property administrator. An equitable distribution to cost accounts of any inventory losses will be subject to a like review and approval.

(2) *Authorization.* The Head of a Procuring Activity or his designee (or if more than one Procuring Activity or Government agency is involved, the Head of the Procuring Activity having the preponderant monetary interest, with the concurrence of other interested Heads of Procuring Activities or their designees, and equivalent officials of other interested Government agencies) may authorize a contractor who is performing or will perform more than one Government contract to use a multicontract cost and material control system in accordance with this paragraph. The approving authority will, for each system, approve such detailed operating procedures as are necessary for that particular system.

(3) *Criteria.* A multicontract cost and material control system may be authorized if the following criteria are met—

(i) the contractor demonstrates that savings or improved operations will result from adoption of the system or that it will otherwise be in the interest of the Government;

(ii) the contractor's accounting system is adequate to satisfy the requirements set out in B–304.8; and

(iii) the system is applied to existing Government contracts only and excludes materials acquired or costs incurred for non-government work or in anticipation of future Government work.

304.7 *Financial control accounts.* * * *

(b) *Material.* * * *

(vi) Materials accounted for under an approved multicontract cost and material control system.

* * * * *

304.8 *Financial accounting requirements for multicontract cost and material control systems.* Whenever a multicontract cost and material control system is authorized, the contractor's financial accounts must include all material, including Government-furnished material in the system. Specifically, his accounting system must be adequate to:

(i) Provide on a complete and timely basis a clear "audit trail" from costs of materials acquired for each contract to materials used or disposed of on each contract;

(ii) Reflect separately for Government-furnished and contractor-acquired material in stores (except work in process) the inventory balances as affected by receipts, issues, adjustments and other dispositions;

(iii) Determine unit costs for each identifiable part, component, subassembly, assembly, end item and contract item;

(iv) Calculate amounts for cost reimbursements and progress payments during the life of the contract by applying or allocating such unit costs developed through each stage of work in process to contract items for the requirements of each contract; and

(v) Insure that when material furnished by one procuring activity is used on a contract of another procuring activity, the furnishing activity receives credit for such material.

[Rev. 7, ASPR, Sept. 1, 1964] (Sec. 2202, 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, United States Army, The Adjutant General.

[F.R. Doc. 64–11104, Filed, Oct. 30, 1964; 8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Entire Executive Civil Service

§ 213.3102 [Revoked]

Effective upon publication in the FEDERAL REGISTER, paragraph(s) of § 213.3102, having expired by its own terms, is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director,
Bureau of Management Services.

[F.R. Doc. 64–11125; Filed, Oct. 30, 1964; 8:49 a.m.]

PART 213—EXCEPTED SERVICE

Department of Agriculture

§ 213.3113 [Revoked]

Effective upon publication in the FEDERAL REGISTER, subparagraph (7) of paragraph (a) of § 213.3113, having expired by its own terms, is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director,
Bureau of Management Services.

[F.R. Doc. 64–11124; Filed, Oct. 30, 1964; 8:49 a.m.]

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 16—MILK INDEMNITY PAYMENT PROGRAM

Subpart—Regulations Governing Milk Indemnity Payments

This subpart contains the regulations which set forth the terms and conditions under which the indemnity payments will be made to eligible dairy farmers whose milk is removed from the market because of pesticide residue content.

Sec.
16.1 Administration.
16.2 Definitions.
16.3 Indemnity payment.
16.4 Normal marketings.
16.5 Fair market value.
16.6 Information to be furnished.
16.7 Other requirements.
16.8 Application for payment.
16.9 Assignments.
16.10 Instructions and form.
16.11 Limitation of authority.
16.12 Estates and trusts; minors.
16.13 Appeals.
16.14 Setoffs.
16.15 Overdisbursement.
16.16 Death, incompetency or disappearance.
16.17 Records and inspection thereof.

AUTHORITY: The provisions of this Part 16 issued pursuant to section 331 of the Economic Opportunity Act of 1964, 78 Stat. 525.

§ 16.1 Administration.

This indemnity payment program will be carried out by ASCS under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and County Committees.

§ 16.2 Definitions.

For purpose of this subpart, the following terms shall have the meanings specified:

(a) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(c) "Deputy Administrator" means the Deputy Administrator, State and County Operations, ASCS.

(d) "State Committee" means the Agricultural Stabilization and Conservation State Committee.

(e) "County Committee" means the Agricultural Stabilization and Conservation County Committee.

(f) "Pesticide" means an economic poison which, at the time of its use, was registered with the Secretary pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135–135k), and was recommended for use in the then current Agriculture Handbook No. 120, "Insecticide Recommendations of the Entomology Research Division for the Control of Insects Affecting Crops, Livestock and Households."

(g) "Milk handler" means the marketing agency to or through which the eligible dairy farmer marketed his milk or butterfat immediately before he was directed to remove his milk or butterfat from the commercial market.

(h) "Eligible farmer" means a person who produces milk which is removed from the commercial market any time from January 1, 1964, to January 15, 1965, pursuant to direction of a public agency or a milk handler because of detection of pesticide residue in such milk by tests made by a public agency or under a milk testing program deemed adequate for the purpose by a public agency.

(i) "Person" means an individual, partnership, association, corporation, trust, estate or other legal entity.

(j) "Application period" means any period with respect to which application for payment is made beginning not earlier than January 1, 1964, and ending not later than January 15, 1965, during which an eligible farmer's milk is removed from the commercial market pursuant to direction of a public agency or milk handler for reason specified in paragraph (h) of this section.

(k) "Pay period" means the period used by the milk handler in settling with the eligible farmer for whole milk or butterfat purchased from him, usually bi-weekly or monthly, or, in the case of an eligible farmer whose commercial market consisted of direct retail sales to consumers, a calendar month.

(l) "Whole milk" means milk as produced by cows.

(m) "Butterfat" means milk fat in farm separated cream.

(n) "Public agency" means any Federal, State or local public regulatory agency.

(o) "Commercial market" means the market to which the eligible farmer normally delivered his milk or butterfat and from which it was removed because of detection of pesticide residues.

(p) "Removed from the commercial market" means milk or butterfat (1) produced and destroyed or fed to livestock, or (2) produced and delivered to a handler who destroyed it or disposed of it on a salvage basis (such as separating it, destroying the fat, and drying the skim milk), or (3) produced and diverted to other than the commercial market.

(q) "Subject to refund" means a payment made by a milk handler to an eligible farmer which such farmer is obligated to refund to the milk handler.

§ 16.3 Indemnity payment.

The indemnity payment to the eligible farmer who is determined by the County Committee to be in compliance with all the terms and conditions specified in the regulations in this subpart shall be the fair market value of his normal marketings for the application period, as determined in accordance with §§ 16.4 and 16.5, less (a) any amount he received for milk or butterfat marketed during the application period, and (b) any amount he received from a milk handler with respect to whole milk or butterfat removed from the commercial market which is not subject to refund.

§ 16.4 Normal marketings.

The County Committee shall determine the eligible producer's normal marketings which, for the purposes of this subpart, shall be the sum of the quantities of whole milk or butterfat which such producer would have sold in the commercial market in each of the pay periods in the application period but for the removal of his milk or butterfat from the commercial market because of detection of pesticide residue. Determination of normal marketings for each pay period shall be based upon (a) if the eligible producer or another person marketed whole milk or butterfat from the farm during the period in the previous year equivalent to the pay period, the marketings of whole milk or butterfat from the farm during such equivalent period, or (b) if the eligible producer or another person did not market whole milk or butterfat from the farm during the period in the previous year equivalent to the pay period, the average of the eligible producer's marketings of whole milk or butterfat from the farm per pay period during the three months immediately prior to removal of his whole milk or butterfat from the commercial market. In the case of normal marketings based

upon paragraph (a) of this section, such base production shall be adjusted to reflect any change in the rate of the eligible farmer's milk production from the production of the previous year due to factors such as changes in herd size both before and after removal of milk or butterfat from the commercial market, and changes in management practices before such removal. In the case of normal marketings based upon paragraph (b) of this section, such base production shall be adjusted to reflect normal changes in the farmer's milk production during the pay period due to seasonal factors affecting production and changes in herd size. If only a portion of a pay period falls within the application period, normal marketings for such pay period shall be reduced so that they represent only that part of such pay period which is within the application period.

§ 16.5 Fair market value.

The County Committee shall determine the fair market value of the eligible producer's normal marketings which, for the purposes of this subpart, shall be the sum of the net proceeds such producer would have received for his adjusted normal marketings in each of the pay periods in the application period. Determination of the net proceeds such producer would have received in each pay period in the application period shall be made on the basis of the eligible producer's normal marketings for each such pay period multiplied by the average net price per hundredweight of whole milk or per pound of butterfat paid during the pay period by such farmer's milk handler in the same area for milk or butterfat similar in quality and butterfat test to that marketed by the eligible farmer in the base period used to determine his normal marketings, or, in the case of an eligible farmer whose commercial market consisted of direct retail sales to consumers, on the basis of his normal marketings in each such pay period multiplied by the average net price per hundredweight of whole milk per pound of butterfat, as determined by the County Committee, which other farmers in the same area who marketed their whole milk or butterfat through milk handlers received for milk or butterfat similar in quality and butterfat test to that marketed by the eligible farmer during the base period used to determine his normal marketings. In determining the average net price for whole milk or butterfat, the County Committee shall deduct from the gross price any transportation and administrative costs normally incurred by the eligible farmer but which were not incurred because of the removal of his milk from the market.

§ 16.6 Information to be furnished.

The eligible farmer shall furnish to the County Committee complete and accurate information sufficient to enable the committee to make the determinations required in §§ 16.4 and 16.5. Such information shall include, but not be limited to:

(a) A copy of the notice or other evidence of action by the public agency or handler which resulted in removing his milk or butterfat from the commercial market, including the name of the pesticide causing such removal.

(b) A record of the quantity and butterfat test of whole milk and the quantity of butterfat, which he produced on his farm and sold during each pay period, from January 1, 1963, to the time the milk was removed from market. This shall be either a certified statement or record furnished by the handler, or equivalent evidence of the volumes and quality of whole milk or butterfat marketed.

(c) The number of cows milked during each pay period in the application period, and during the pay periods for a three month period immediately prior to the application period.

(d) A statement for each pay period in the application period from the handler showing the average net price per cwt. of whole milk or pound of butterfat paid in the eligible producer's area for whole milk and butterfat similar in quality to that delivered by the eligible farmer during the base period used to determine his normal marketings. Such average price shall be based on the market price for such milk or butterfat less transportation and other costs which are normally incurred by the eligible farmer in connection with deliveries from the farm, but which have been eliminated because of removal of his milk from the market. In the event the handler does not have information on such transportation costs, the eligible farmer shall furnish it.

(e) The amount of payments, if any, received from the sale of milk or butterfat during the application period.

(f) The amount of any payments made to the eligible farmer by the milk handler with respect to the milk or butterfat removed from market which are not subject to refund.

(g) If a pesticide containing DDT was used after July 1, 1963, or if any other pesticide was used after November 15, 1963, by the farmer in producing feed for his dairy cattle, the name of such pesticide and the approximate date of such use, and the name of the manufacturer.

(h) Such other information as the County Committee may require to enable them to make the determinations required by the Economic Opportunity Act of 1964 and regulations in this subpart.

§ 16.7 Other requirements.

No indemnity payment shall be made under this subpart to any farmer whose milk was removed from the commercial market (a) if the pesticide, at the time of its use by the farmer, was not registered with the Secretary and recommended for use as provided in § 16.2(f), (b) if such removal was a result of his failure to use the pesticide in accordance with the directions and limitations stated on the label provided with the pesticide, (c) if he purchased feed used in feeding his dairy cattle which he knew contained a harmful level of pesticide residues, or (d) if he has failed to adopt practices designed to eliminate pesticide residues from his milk in order that such milk may be reinstated to the commercial market as soon as possible.

§ 16.8 Application for payment.

Application for payment shall be made, on a form prescribed therefor by the Deputy Administrator, by the eligible farmer or his legal representative, as set forth in § 16.12, who must sign and file the form with the ASCS County Office for the county where the farm headquarters are located no later than January 15, 1965, or such later date as the Deputy Administrator may specify. Application for payment shall cover application periods of at least 28 days, except that, if the entire application period, or the last application period, is shorter than 28 days, applications for payment may be filed for such shorter period.

§ 16.9 Assignment.

No assignment shall be made of any indemnity payment due or to come due under the regulations in this subpart.

§ 16.10 Instructions and forms.

The Deputy Administrator shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart.

§ 16.11 Limitation of authority.

(a) County office managers and State and County Committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State Committee may take any action authorized or required by the regulations in this subpart to be taken by the County Committee which has not been taken by such Committee. The State Committee may also (1) correct, or require a County Committee to correct, any action taken by such County Committee which is not in accordance with the regulations in this subpart, or (2) require a County Committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or County Committee shall preclude the Deputy Administrator or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or County Committee.

§ 16.12 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, the guardian of an estate of a ward or an incompetent person, and the trustee of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian or trustee shall be considered to be the production of the person he represents. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) A minor who is otherwise an eligible producer shall be eligible for indemnity payments only if he meets one of the following requirements: (1) The

right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

§ 16.13 Appeals.

The Appeal Regulations issued by the Administrator, ASCS, effective July 25, 1964 (29 F.R. 8200), shall be applicable to appeals by farmers from determinations made pursuant to the regulations in this subpart.

§ 16.14 Setoffs.

(a) If the eligible farmer is indebted to any agency of the United States and such indebtedness is listed on the county debt record, indemnity payments due the eligible farmer under the regulations in this part shall be applied, as provided in the Secretary's Setoff Regulations, Part 13 of this subtitle (29 F.R. 9425), to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the eligible farmer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 16.15 Overdisbursement.

If the indemnity payment disbursed to an eligible farmer exceeds the amount authorized under the regulations in this subpart the eligible farmer shall be personally liable for repayment of the amount of such excess.

§ 16.16 Death, incompetency or disappearance.

In the case of the death, incompetency, or disappearance of any eligible farmer who is entitled to an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in §§ 1472.1151 and 1472.1154 of this title (Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) 27 F.R. 933) upon proper application to the office of the appropriate County Committee.

§ 16.17 Records and inspection thereof.

The eligible farmer as well as his milk handler and any other person who furnishes evidence to such dairy farmer for the purpose of enabling him to receive a milk indemnity payment under this program shall maintain any existing books, records and accounts supporting any information furnished in connection with this program until January 31, 1968. Authorized representatives of the Department of Agriculture shall at all times during regular business hours have access to the premises of the eligible dairy farmer, his milk handler and of the person who furnished evidence to the eligible farmer for the purpose of enabling him to receive a payment, in order to inspect, examine and make copies of such books, records and accounts.

NOTE: The reporting and/or record keeping requirement contained herein has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

STATEMENT OF BASES AND CONSIDERATIONS

The Economic Opportunity Act of 1964, Part D, Title III, section 331 thereof authorizes the Secretary of Agriculture to make indemnity payments, at a fair market value to dairy farmers who have been directed since January 1, 1964, to remove their milk from commercial markets because it contained residues of chemicals registered and approved for use by the Federal Government, at the time of such use. Such indemnity payments will be made to a dairy farmer for milk or butterfat removed from the commercial market until he has been reinstated or January 15, 1965, whichever is earlier. This regulation establishes the basis for determining which dairy farmers are eligible to receive payments, the volumes of milk or butterfat in farm separated cream on which they are eligible for payment, and the fair market value of such milk or butterfat. Some farmers have reduced their feeding and milk production as a means of eliminating pesticide residues and in many cases the quantity of milk or butterfat removed from the commercial market is not available since it has been dumped on the farm. Therefore, eligible dairy farmers' marketings in the same period a year earlier, subject to certain adjustments will be the basis for determining the quantities on which they are eligible for payment.

Provision is made for deducting amounts of payments received by the dairy farmer in the event any of the milk produced on his farm is sold during the eligible period. Some milk handlers have assisted dairy farmers whose milk or butterfat has been withheld from market by advancing at least a partial payment for such milk or butterfat. The regulation provides that the indemnity payment will be reduced by any amount of advance which is not repayable to the handler in order that such a farmer will not receive an amount of payment for the withheld milk or butterfat in excess of that which he would normally have received.

Provision is also made as a condition of payment that the dairy farmer did not misuse the pesticide in applying it in the production of his feed crop and that he did not purchase feed which he knew to contain pesticide residues, that he has adopted practices designed to eliminate the pesticide residues from his milk in order to have such milk reinstated in the market. Other conditions require the furnishing of certified evidence of the farmers milk marketings, number of cows milked and prices paid to other farmers by his milk handler and other information to serve as a basis for determining the fair market value of the milk removed from the market and the amount of indemnity payment to which the dairy farmer is entitled.

Accordingly, I hereby find and conclude that the aforestated regulations will effectuate the applicable provisions of the Act.

Effective date: Date of publication.

Signed at Washington, D.C., on October 27, 1964.

CHARLES S. MURPHY,
Acting Secretary of Agriculture.

[F.R. Doc. 64-11111; Filed, Oct. 30, 1964; 8:46 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Tree Nuts), Department of Agriculture

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Determination Relative to Expenses and Fixing of Rate of Assessment for 1964–65 Fiscal Period and Carryover of Unexpended Funds

Notice was published in the October 13, 1964, issue of the FEDERAL REGISTER (29 F.R. 14077) that consideration was being given to proposals regarding the expenses and the fixing of the rate of assessment for the fiscal period ending July 31, 1965, under the marketing agreement, and Order No. 906 (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in lower Rio Grande Valley of Texas, effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were submitted by the Texas Valley Citrus Committee (established pursuant to the said marketing agreement and order) it is hereby found and determined that:

§ 906.204 Expenses and rate of assessment for the 1964–65 fiscal period and carryover of unexpended funds.

(a) *Expenses.* The expenses that are reasonable and likely to be incurred by the Texas Valley Citrus Committee, established pursuant to the provisions of the aforesaid marketing agreement and order, for the maintenance and functioning of such committee, in accordance with the provisions thereof, during the said fiscal period beginning August 1, 1964, and ending July 31, 1965, will amount to $20,000.

(b) *Rate of assessment.* The rate of assessment which each handler who first handles fruit shall pay as his pro rata share of the aforesaid expenses in accordance with the applicable provisions of said marketing agreement and order is hereby fixed at one-half cent ($0.005) per 7/10 bushel carton, or equivalent quantity of fruit handled by such handler during the 1964–65 fiscal period.

(c) *Reserve.* Unexpended assessment funds, in excess of expenses incurred during the fiscal period ended July 31, 1964, shall be carried over as a reserve in accordance with the applicable provisions of § 906.35(a)(2) of said marketing agreement and order.

(d) Terms used in said marketing agreement and order, shall, when used herein, have the same meaning as is given to the respective terms in said marketing agreement and order.

It is hereby found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) the relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable fruit from the beginning of such period; and (2) the current fiscal period began on August 1, 1964, and the rate of assessment herein fixed will automatically apply to all assessable oranges and grapefruit beginning with such date.

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

Dated: October 28, 1964.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64–11133; Filed, Oct. 30, 1964; 8:50 a.m.]

[Lemon Reg. 135]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.435 Lemon Regulation 135.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held open meetings after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at these meetings; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meetings were held; the provisions of this section, including its effective time, are identical with the aforesaid recommendations of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meetings were held on October 13 and 27, 1964.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., November 1, 1964, and ending at 12:01 a.m., P.s.t., November 1, 1965, no handler shall handle any lemons, grown in District 1, District 2, or District 3, which are of a size smaller than 1.82 inches in diameter, which shall be the largest measurement at right angles to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the lemons in any type of container may measure less than 1.82 inches in diameter.

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

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

Dated: October 28, 1964.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64–11130; Filed, Oct. 30, 1964; 8:49 a.m.]

[Lemon Reg. 136]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.436 Lemon Regulation 136.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on October 27, 1964.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., November 1, 1964, and ending at 12:01 a.m., P.s.t., November 8, 1964, are hereby fixed as follows:

(i) District 1: Unlimited movement;
(ii) District 2: 106,950 cartons;
(iii) District 3: 106,950 cartons.

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

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

Dated: October 28, 1964.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64–11131; Filed, Oct. 30, 1964; 8:49 a.m.]

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY OF SOUTH TEXAS

Limitation of Shipments

Notice of rule making with respect to proposed Limitation of Shipments regulation to be made effective under Marketing Agreement No. 144 and Order No.

971 (7 CFR Part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas, was published in the FEDERAL REGISTER, September 19, 1964 (29 F.R. 13105) and September 24, 1964 (29 F.R. 13269). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

This notice afforded interested parties an opportunity to file data, views, or arguments pertaining thereto within twenty days after publication. None was filed.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, it is hereby found that the limitation of shipments regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

§ 971.307 Limitation of shipments.

During the period December 14, 1964, through March 27, 1965, no person may handle any lot of lettuce grown in the production area unless the lettuce meets requirements of paragraphs (a), (b), and (c) of this section, or unless the lettuce is handled in accordance with paragraph (d) or (e), of this section. Further, no handler may package lettuce during the above period on any Sunday or on Christmas day.

(a) *Grade.* Seventy-five percent U.S. No. 1 quality, or better, with not more than 10 percent serious damage including not more than five percent decay in any lot. Individual containers shall have not less than 60 percent U.S. No. 1 quality, with not more than 23 percent serious damage, including not more than three heads affected by decay.

(b) *Sizing and pack.* (1) Lettuce heads, if wrapped, may be packed only 18, 20, 22, 24, or 30 heads per container.

(2) Lettuce heads, if not wrapped, may be packed only 18, 24, or 30 heads per container.

(c) *Containers.* Containers may be only—

(1) Cartons with inside dimensions of 10 inches x 14¼ inches x 21⁵⁄₁₆ inches (designated as carrier container No. 7303), or

(2) Cartons with inside dimensions of 9¾ inches x 14 inches x 21 inches (designated as carrier container Nos. 7306 and 7313).

(d) *Minimum quantities.* Any person may handle up to, but not to exceed two cartons of lettuce a day without regard to inspection, assessment, grade, size, and pack requirements, but it must meet container requirements. This exception may not be applied to any portion of a shipment of over two cartons of lettuce.

(e) *Special purpose shipments.* Lettuce not meeting grade, size, or container requirements of paragraph (a), (b), or (c) of this section may be handled for any purpose listed, if handled as prescribed in this paragraph. Inspection or assessments are not required on such shipments.

(1) For relief, charity, or experimental purposes, if prior to handling, the handler pursuant to §§ 971.120–971.125 obtains a Certificate of Privilege applicable thereto and reports thereon.

(2) For export to Mexico, if the handler of such lettuce loads or transports it only in a vehicle bearing Mexican registration (license) and he maintains the following records of each transaction.

(i) Name and address of the purchaser;

(ii) Quantity involved in each sale;

(iii) Date of sale; and

(iv) Identification by make, model, and license number of the purchaser's or trucker's vehicle.

(f) *Inspection.* (1) No handler may handle any lettuce for which an inspection certificate is required unless an appropriate inspection certificate has been issued with respect thereto.

(2) No handler may transport, or cause the transportation of, by motor vehicle, any shipment of lettuce for which an inspection certificate is required unless each such shipment is accompanied by a copy of an inspection certificate or by a copy of a shipment release form (SPI–23) furnished by the inspection service verifying that such shipment meets the current grade, size, pack and/or container regulations promulgated under this part. A copy of the inspection certificate, or shipment release form, applicable to each truck lot shall be available and surrendered upon request to authorities designated by the committee.

(3) For administration of this part, an inspection certificate or shipment release form required by the committee as evidence of inspection is valid for only 72 hours following completion of inspection, as shown on such certificate or form.

(g) *Definitions.* (1) "Wrapped" heads of lettuce refers to those which are enclosed individually in parchment, plastic, or other commercial film (cf. AMS 481) and then packed in cartons or other containers.

(2) "U.S. No. 1" and "serious damage" shall have the same meaning as in the U.S. Standards for Lettuce (§§ 51.2510–51.2531 of this title).

(3) All other terms used in this section shall have the same meaning as when used elsewhere in this part.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.)

Dated: October 28, 1964, to become effective December 14, 1964.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64–11110; Filed, Oct. 30, 1964; 8:46 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter II—Agricultural Marketing Service (Packers and Stockyards Division), Department of Agriculture

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

Statement With Respect to Purchases of Livestock by Packers for Export

The following statement concerning the livestock buying operations of packers subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), has been formulated and adopted by the Agricultural Marketing Service for the guidance of all packers and is issued as section 203.6, Part 203, Chapter II, Title 9, Code of Federal Regulations, to read as follows:

§ 203.6 Statement with respect to the purchase of livestock by packers for export.

(a) In recent months, a demand has arisen in Europe for livestock shipped from the United States. Present signs reveal a growing demand with respect to such movements of animals. The exportation of animals from the United States at the present time is in the public interest in order to assist in expanding markets for livestock produced in this country. Various packers have advised the Packers and Stockyards Division of the Agricultural Marketing Service that they have been approached by representatives of foreign concerns with respect to supplying such foreign concerns with livestock produced in the United States.

(b) It has been the consistent policy of the Agricultural Marketing Service in the administration of the Packers and Stockyards Act, 1921, as amended, not to permit packers to engage in the business of buying livestock for purposes of resale. This policy has been based on marketing conditions not involving export considerations. With respect to the operations of packers in buying livestock for purposes of slaughter, the Agricultural Marketing Service has required that all packer-buyers register under the Act "as dealers to purchase livestock for slaughter only" (§ 201.10(c)) of this chapter.

(c) It is in the public interest to assist the livestock industry by facilitating the movement of livestock into export channels. Buying or selling livestock for export, however, comes within the definition of the term "dealer" as used in section 301(d) of the Act (7 U.S.C. 201(d)). The Agricultural Marketing Service believes that, under present conditions and circumstances, the Act should not be deemed to preclude packers from buying or selling livestock, as dealers, for export. Any packer who de-

sires to engage in such dealer operations is subject to, and must comply with, the registration requirements of § 201.10(a) of this chapter, and the bonding requirements of §§ 201.29 through 201.34 of this chapter and in all other respects shall conduct such operations in accordance with the requirements of the Act and regulations applicable to livestock dealers.

(d) The Packers and Stockyards Division of the Agricultural Marketing Service will continually observe the developments with respect to the exportation of livestock by packers. If it appears that the dealer operations of packers engaged in the exportation of livestock result in conflict with the provisions of section 202 of the Act (7 U.S.C. 192), the Packers and Stockyards Division will take whatever action may be necessary to correct the situation.

The foregoing statement shall become effective upon its publication in the FEDERAL REGISTER.

(Secs. 202, 301, 303, 312, 401, 407; 42 Stat. 161 et seq., 42 Stat. 169, as amended, sec. 1, 57 Stat. 422; 7 U.S.C. 192, 201, 203, 204, 213, 221, 228)

Done at Washington, D.C., this 28th day of October 1964.

CLARENCE H. GIRARD,
Deputy Administrator.

[F.R. Doc. 64-11132; Filed, Oct. 30, 1964; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES [NEW]

[Reg. Docket No. 6278; Amdt. 95-121]

PART 95—IFR ALTITUDES [NEW]

Miscellaneous Changes

The purpose of this amendment to Part 95 of the Federal Aviation Regulations is to make changes in the IFR altitudes at which all aircraft shall be flown over a specified route or portion thereof. These altitudes, when used in conjunction with the current changeover points for the routes or portions thereof, also assure navigational coverage that is adequate and free of frequency interference for that route or portion thereof.

As a situation exists which demands immediate action in the interest of safety, I find that compliance with the notice and procedure provisions of the Administrative Procedure Act is impracticable and that good cause exists for making this amendment effective within less than 30 days from publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 95 [New] of the Federal Aviation Regulations is amended, effective December 10, 1964, as follows:

1. By amending Subpart C as follows:

Section 95.101 *Amber Federal airway 1* is amended to read in part:

From, to, and MEA
Sitka, Alaska, LFR; Cape Spencer INT, Alaska; 5,300.
Cape Spencer INT, Alaska; Yakutat, Alaska, LFR; 2,000.

Section 95.6241 *Red Federal airway 41* is amended to read in part:

Cape Spencer INT, Alaska; Gustavus, Alaska, LFR; 5,500.

Section 95.1001 *Direct routes—U.S.* is amended by adding:

Point Reyes, Calif., VOR; Woodside, Calif., VOR; 5,000.
Texarkana, Ark., VOR; Tyler, Tex., LF/RBN; *2,500. *2,000—MOCA.
Texarkana, Ark., VOR; Hot Springs, Ark., LF/RBN; *2,500. *2,300—MOCA.

Section 95.1001 *Direct routes—U.S.* is amended to delete:

St. Petersburg, Fla., VOR; West Palm Beach, Fla., VOR; *5,000. *1,500—MOCA.
Texarkana, Ark., LF/RBN; Tyler, Tex., LF/RBN; 2,000.
Enid, Okla., VOR (Woodring Field); Gage, Okla., VOR; 3,700.
Int. SE crs Carter, Tex., ILS and 210° M Dallas VOR; Dallas, Tex., VOR; 2,000.

Section 95.1001 *Direct routes—U.S.* is amended to read in part:

Salinas, Calif., VOR; Morgan INT, Calif.; 5,000.
Dallas, Tex., VOR; McAlester, Okla., VOR; *3,000. *2,500—MOCA.
Cannon AFB, N. Mex., LF/RBN; Field INT, N. Mex.; *6,500. *5,800—MOCA.

Section 95.6001 *VOR Federal airway 1* is amended to read in part:

Myrtle Beach, S.C., VOR; *Crescent INT, S.C.; **1,600. *3,000—MRA. **1,400—MOCA.
Crescent INT, S.C.; *Green INT, S.C.; **1,600. *2,500—MRA. **1,400—MOCA.
Green INT, S.C.; Wilmington, N.C., VOR; *1,600. *1,400—MOCA.

Section 95.6002 *VOR Federal airway 2* is amended to read in part:

Mariaville INT, N.Y.; Albany, N.Y., VOR; **3,000. *3,500—MRA. **2,500—MOCA.
Albany, N.Y., VOR; *Melrose INT, N.Y.; 3,500. *4,600—MCA Melrose INT, eastbound. Melrose INT, N.Y.; *Griswoldville INT, Mass.; 5,500. *4,300—MCA Griswoldville INT, westbound.

Section 95.6003 *VOR Federal airway 3* is amended to read in part:

Jacksonville, Fla., VOR., via W alter.; *O'Neil INT, Fla., via W alter.; 1,300. *1,500—MRA. O'Neil INT, Fla., via W alter.; Brunswick, Ga., VOR, via W alter.; 1,300.

Section 95.6004 *VOR Federal airway 4* is amended to read in part:

Loveland INT, Colo.; Longmont INT, Colo.; 7,900.

Section 95.6007 *VOR Federal airway 7* is amended to read in part:

New Hebron INT, Ind., via W alter.; Terre Haute, Ind., VOR, via W alter.; 2,500.

Section 95.6008 *VOR Federal airway 8* is amended to read in part:

Long Beach, Calif., VOR; Ontario, Calif., VOR; 5,000.
Ontario, Calif., VOR; Fontana INT, Calif., northeastbound, 10,000; southwestbound, 5,000.
Cisco INT, Utah; Grand Junction, Colo., VOR; 10,000.
Grand Junction, Colo.; Collbran INT, Colo.; southwestbound, 10,000; northeastbound, 13,500.

Section 95.6009 *VOR Federal airway 9* is amended to read in part:

*Waverly INT, Ill.; Capital, Ill., VOR; **2,200. *2,700—MRA. **2,000—MOCA.
McComb, Miss., VOR; *Florence INT, Miss.; **2,200. *3,200—MRA. **2,000—MOCA.

Section 95.6012 *VOR Federal airway 12* is amended to read in part:

Johnstown, Pa., VOR; Harrisburg, Pa., VOR; 4,500.
Bible Grove, Ill., VOR; Lewis, Ind., VOR; 2,500.
Gage, Okla., VOR; *Capron INT, Okla.; 4,300 *5,000—MRA.

Section 95.6014 *VOR Federal airway 14* is amended to read in part:

Ranch INT, N. Mex.; *Caprock INT, N. Mex.; **7,500. *9,000—MRA. **7,100—MOCA.
Caprock INT, N. Mex.; *Whiteface INT, Tex.; **7,500. *8,000—MRA. **5,500—MOCA.
Carlisle INT, N.Y.; Albany, N.Y., VOR; 3,600.
Albany, N.Y., VOR; *Melrose INT, N.Y.; 3,500. *4,600—MCA Melrose INT, eastbound.
Melrose INT, N.Y.; Griswoldville INT, Mass.; 5,500. *4,300—MCA Griswoldville INT, westbound.

Section 95.6016 *VOR Federal airway 16* is amended to read in part:

Los Angeles, Calif., VOR; Ontario, Calif., VOR; 4,500.
Banning INT, Calif.; *Palm Springs, Calif., VOR; **13,000. *11,400—MCA Palm Springs VOR, westbound. **12,400—MOCA.
Jacks Creek, Tenn., via N alter.; Vanleer INT, Tenn., via N alter.; *2,600. *2,200—MOCA.

Section 95.6017 *VOR Federal airway 17* is amended to read in part:

Omega INT, Okla.; Camargo INT, Okla.; *3,700. *3,600—MOCA.
Camargo INT, Okla.; Gage, Okla., VOR; 4,300.

Section 95.6019 *VOR Federal airway 19* is amended to read in part:

Cimarron, N. Mex., VOR, via E alter.; Int 040° M rad, Cimarron VOR and 163° M rad, Pueblo VOR, via E alter.; *11,600. *10,800—MOCA.
Int. 040° M rad, Cimarron VOR, and 163° M rad, Pueblo VOR, via E alter.; *Earl INT, Colo., via E alter.; 11,600. *10,500—MCA Earl INT, southbound.

Section 95.6020 *VOR Federal airway 20* is amended to read in part:

Picayune, Miss., VOR, via N alter.; Mobile, Ala., VOR, via N alter.; *2,000. *1,800—MOCA.

Section 95.6021 *VOR Federal airway 21* is amended to read in part:

Long Beach, Calif., VOR; Ontario, Calif., VOR; 5,000.
Ontario, Calif., VOR; Fontana INT, Calif., northeastbound, 10,000; southwestbound, 5,000.

Section 95.6023 *VOR Federal airway 23* is amended to read in part:

Gorman, Calif., VOR; *Grapevine INT, Calif.; 9,500. *9,500—MCA Grapevine INT, southbound.
Lamont INT, Calif., via E alter.; *Arvin INT, Calif., via E alter.; 8,000. *7,300—MCA Arvin INT, southbound.
Roseburg, Oreg. VOR, via W alter.; *Drain INT, Oreg., via W alter.; 5,000. *6,100—MRA.

From, to, and MEA

Section 95.6026 *VOR Federal airway 26* is amended to delete:

Cleveland, Ohio, VOR; New London INT, Ohio; *3,000. *2,300—MOCA.

Section 95.6036 *VOR Federal airway 36* is amended to read in part:

Lewiston INT, N.Y.; Buffalo, N.Y., VOR; *2,300. *2,000—MOCA.
Dale INT, N.Y.; Thurston INT, N.Y.; *4,000. *3,200—MOCA.

Section 95.6048 *VOR Federal airway 48* is amended to read in part:

Burlington, Iowa, VOR; London INT, Ill.; *2,400. *1,900—MOCA.

Section 95.6050 *VOR Federal airway 50* is amended to read in part:

Decatur, Ill., VOR; Arcola INT, Ill.; *2,400. *2,000—MOCA.
Arcola INT, Ill.; Terre Haute, Ind., VOR; *2,500. *2,100—MOCA.

Section 95.6069 *VOR Federal airway 69* is amended to read in part:

Auburn INT, Ill.; Capital, Ill., VOR; *2,100. *2,000—MOCA.

Section 95.6070 *VOR Federal airway 70* is amended to read in part:

Vienna, Ga., VOR; Allendale, S.C., VOR; *3,000. *1,700—MOCA.
Picayune, Miss., VOR; Greene County, Miss., VOR; *2,000. *1,500—MOCA.

Section 95.6072 *VOR Federal airway 72* is amended to read in part:

Hadley INT, Pa.; Tidioute, Pa., VOR; *3,500. *3,200—MOCA.

Section 95.6074 *VOR Federal airway 74* is amended to read in part:

*Magazine INT, Ark.; Little Rock, Ark., VOR; 4,000. *3,300—MCA Magazine INT, eastbound.

Section 95.6076 *VOR Federal airway 76* is amended to read in part:

Paige INT, Tex.; *Round Top INT, Tex.; **2,500. *2,500—MRA. **1,700—MOCA.
Round Top INT, Tex.; Sealy INT, Tex.; *6,000. *1,700—MOCA.
Lubbock, Tex., VOR; *Welch INT, Tex.; 5,100. *7,000—MRA.

Section 95.6078 *VOR Federal airway 78* is amended to read in part:

Huron, S. Dak., VOR; Watertown, S. Dak., VOR; 3,000.

Section 95.679 *VOR Federal airway 79* is amended to read in part:

Hobbs, N. Mex., VOR; *Welch INT, Tex.; **7,000. *7,000—MRA. **5,300—MOCA.

Section 95.6081 *VOR Federal airway 81* is amended to read in part:

Pat INT, Tex.; *Welch INT, Tex.; **5,100. *7,000—MRA. **4,300—MOCA.

Section 95.6085 *VOR Federal airway 85* is amended to read in part:

Casper, Wyo., VOR; Riverton, Wyo., VOR; 8,200.

Section 95.6091 *VOR Federal airway 91* is amended to read in part:

Poughkeepsie, N.Y., VOR; Athens INT, N.Y.; *3,000. *2,600—MOCA.
Athens INT, N.Y.; Greenbush INT, N.Y.; *2,600. *1,900—MOCA.
Greenbush INT, N.Y.; Albany, N.Y., VOR; *2,300. *1,900—MOCA.
Glens Falls, N.Y., VOR; Benson INT, N.Y.; 4,000.

From, to, and MEA

Section 95.6100 *VOR Federal airway 100* is amended to read in part:

Chadron, Nebr., VOR; O'Neill, Nebr., VOR; *10,000. *5,900—MOCA.

Section 95.6102 *VOR Federal airway 102* is amended to read in part:

Hobbs, N. Mex., VOR; Lubbock, Tex., VOR; *6,000. *5,300—MOCA.

Section 95.6107 *VOR Federal airway 107* is amended to read in part:

*Los Banos, Calif., VOR; **Cathedral INT, Calif.; ***7,000. *5,500—MCA Los Banos INT, southbound. **7,000—MCA Cathedral INT, northwestbound. ***5,700—MOCA.

Section 95.6122 *VOR Federal airway 122* is amended to read in part:

Talent DME Fix, Oreg.; Klamath Junction INT, Oreg.; *10,500. *9,500—MOCA.

Section 95.6124 *VOR Federal airway 124* is amended to read in part:

Terre Haute, Ind., VOR; Wilbur INT, Ind.; *2,400. *1,900—MOCA.

Section 95.6135 *VOR Federal airway 135* is amended to read in part:

*Lida INT, Nev.; Tonopah, Nev., VOR; 9,000. *10,000—MCA Lida INT, northwestbound.

Section 95.6155 *VOR Federal airway 155* is amended to read in part:

Amelia INT, Va.; Flat Rock, Va., VOR; 2,000.

Section 95.6162 *VOR Federal airway 162* is amended by adding:

Int. 139° M rad, Clarksburg VOR, and 096° M rad, Elkins VOR; Clarksburg, W. Va., VOR; 5,200.

Section 95.6163 *VOR Federal airway 163* is amended by adding:

Brownsville, Tex., VOR, via W alter.; Harlingen, Tex., VOR, via W alter.; *1,500. *1,300—MOCA.
Harlingen, Tex., VOR, via W alter.; Armstrong INT, Tex., via W alter.; *1,500. *1,400—MOCA.

Section 95.6163 *VOR Federal airway 163* is amended to read in part:

San Antonio, Tex., VOR, via W alter.; *Guadalupe INT, Tex., via W alter.; **3,100. *4,300—MRA. **2,600—MOCA.

Section 95.6168 *VOR Federal airway 168* is amended to read in part:

Snake INT, Nebr.; O'Neill, Nebr., VOR; *13,000. *5,600—MOCA.

Section 95.6176 *VOR Federal airway 176* is amended to read in part:

Empire INT, Ala., via N alter.; Birmingham, Ala., VOR, via N alter.; 2,000.
Holly Springs, Miss., VOR; *Guntown INT, Miss.; **2,000. *3,000—MRA. **1,800—MOCA.
Guntown INT, Miss.; Hamilton, Ala., VOR; 2,200.
Hamilton, Ala., VOR; Jasper INT, Ala.; 2,000.
Jasper INT, Ala.; Birmingham, Ala., VOR; 1,700.

Section 95.6180 *VOR Federal airway 180* is amended to read in part:

*Bastrop INT, Tex.; **Smithville INT, Tex.; 2,000. *3,000—MRA. **3,300—MRA.

Section 95.6187 *VOR Federal airway 187* is amended to read in part:

From, to, and MEA

*Judith Gap INT, Mont.; **Great Falls, Mont., VOR; ***11,000. *9,500—MCA Judith Gap INT, northwestbound. **7,400—MCA Great Falls VOR, southeastbound. ***10,300—MOCA.

Section 95.6190 *VOR Federal airway 190* is amended to read in part:

Gage, Okla., VOR; *Capron INT, Okla.; 4,300. *5,000—MRA.
Las Vegas, N. Mex., VOR; *Hayden DME Fix, N. Mex.; **9,500. *7,500—MCA Hayden DME Fix, westbound. **9,000—MOCA.
Hayden DME Fix, N. Mex.; Dalhart, Tex., VOR; *7,000. *6,500—MOCA.

Section 95.6194 *VOR Federal airway 194* is amended to read in part:

Cofield, N.C., VOR, via S alter.; *Sunbury INT, N.C., via S alter.; 1,400. *2,500—MRA.
Sunbury INT, N.C., via S alter.; Norfolk, Va., VOR, via S alter.; 1,400.

Section 95.6196 *VOR Federal airway 196* is amended to read:

Utica, N.Y., VOR; Cranberry INT, N.Y.; *8,000. *4,700—MOCA.
Cranberry INT, N.Y.; Redford INT, N.Y.; *8,000. *4,900—MOCA.
Redford INT, N.Y.; Plattsburgh, N.Y., VOR; *5,000. *4,500—MOCA.

Section 95.6211 *VOR Federal airway 211* is added to read:

Int. 218° M rad, Alamosa VOR and 096° M rad, Durango VOR; *Durango, Colo., VOR; westbound, 11,000; eastbound, **13,000. *8,700—MCA Durango VOR, eastbound. **11,000—MOCA.
*Durango, Colo., VOR; Int. 270° M rad, Durango VOR, and 133° M rad, Dove Creek, VOR; 10,800. *9,200—MCA Durango VOR, westbound.

Section 95.6212 *VOR Federal airway 212* is amended to read in part:

Lockhart INT, Tex.; *Smithville INT, Tex.; **2,600. *3,300—MRA. **1,500—MOCA.
Coalfax INT, Pa.; Harrisburg, Pa., VOR; 4,500.

Section 95.6219 *VOR Federal airway 219* is amended to read in part:

Hayes Center, Nebr., VOR; Int. 047° M rad, Hayes Center VOR, and 079° M rad, North Platte, VOR; *5,000. *4,100—MOCA.
Int. 047° M rad, Hayes Center VOR, and 079° M rad, North Platte VOR; Wolbach, Nebr., VOR; *5,000. *3,700—MOCA.

Section 95.6222 *VOR Federal airway 222* is amended to read in part:

Fredericksburg INT, Tex.; *Guadalupe INT, Tex.; **4,000. *4,300—MRA. **3,000—MOCA.
Lockhart INT, Tex.; *Smithville INT, Tex.; **2,600. *3,300—MRA. **1,500—MOCA.
Smithville INT, Tex.; *Round Top INT, Tex.; **5,000. *2,500—MRA. **1,800—MOCA.
Round Top INT, Tex.; Sealy INT, Tex.; *6,000. *1,700—MOCA.

Section 95.6234 *VOR Federal airway 234* is amended to read in part:

*Conchas Dam INT, N. Mex.; Tank DME Fix, Tex.; **10,000. *8,500—MCA Conchas Dam INT, northeastbound. **7,000—MOCA.
Tank DME Fix, Tex.; Dalhart, Tex., VOR; *6,500. *6,200—MOCA.

Section 95.6241 *VOR Federal airway 241* is amended to read in part:

Dothan, Ala., VOR; *Bakerhill INT, Ala.; **2,000. *2,500—MRA. **1,700—MOCA.

From, to, and MEA

Bakerhill INT, Ala.; Eufaula, Ala., VOR; *2,000. *1,700—MOCA.

Section 95.6244 *VOR Federal airway 244* is amended to read in part:

Woodward INT, Calif.; Duckwall INT, Calif.; 8,000.

Section 95.6263 *VOR Federal airway 263* is amended to read in part:

Cimarron, N. Mex., VOR; *Tobe, Colo., VOR; **11,160. *8,000—MCA Tobe VOR, southwestbound; **10,800—MOCA.

Section 95.6264 *VOR Federal airway 264* is amended to read in part:

Los Angeles, Calif., VOR, via S alter.; Ontario, Calif., VOR, via S alter.; 4,500.
Banning INT, Calif., via S alter.; *Palm Springs, Calif., VOR, via S alter.; **13,000. *11,400—MCA Palm Springs VOR, westbound; **12,400—MOCA.

Section 95.6270 *VOR Federal airway 270* is amended to read in part:

*Athens INT, N.Y.; Hillsdale INT, N.Y.; **4,000. *4,000—MCA Athens INT, westbound, **3,700—MOCA.
Hillsdale INT, N.Y.; Chester, Mass., VOR; 4,000.

Section 95.6278 *VOR Federal airway 278* is amended to read in part:

Columbus, Miss., VOR; Birmingham, Ala., VOR; 2,000.
Columbus, Miss., VOR, via S alter.; Millport INT, Ala., via S alter.; 2,000.
Millport INT, Ala., via S alter.; Tuscaloosa, Ala., VOR, via S alter.; 1,900.

Section 95.6280 *VOR Federal airway 280* is amended to read in part:

Ranch INT, N. Mex., via S alter.; *Caprock INT, N. Mex., via S alter.; **7,500. *9,000—MRA. **7,100—MOCA.
Caprock INT, N. Mex., via S alter.; *Dora INT, N. Mex., via S alter.; **9,000. *10,000—MRA. **5,500—MOCA.
Roswell, N. Mex., VOR; *Dora INT, N. Mex.; **6,500. *10,000—MRA. **5,500—MOCA.

Section 95.6306 *VOR Federal airway 306* is amended to read:

Austin, Tex., VOR; Navasota, Tex., VOR; *2,500. *2,100—MOCA.
Navasota, Tex., VOR; Daisetta, Tex., VOR; 2,100.

Section 95.6401 *Hawaii VOR Federal airway 1* is amended to read in part:

Penguin INT, Hawaii; *Lanai, Hawaii, VOR; 3,800. *4,400—MCA Lanai VOR, eastbound.
Harpoon INT, Hawaii; Lava INT, Hawaii; 7,000.
Lava INT, Hawaii; Upolu Point, Hawaii, VOR; 6,000.

Section 95.6402 *Hawaii VOR Federal airway 2* is amended to read in part:

Penguin INT, Hawaii; *Lanai, Hawaii, VOR; 3,800. *4,400—MCA Lanai VOR, eastbound.
Mango INT, Hawaii; *Harpoon INT, Hawaii; 6,000. *7,000—MCA Harpoon INT, eastbound.

Section 95.6421 *VOR Federal airway 421* is amended by adding:

Farmington, N. Mex., VOR; *Durango, Colo., VOR; 9,600. *9,100—MCA Durango VOR, southbound.
*Durango, Colo., VOR; **Gunnison, Colo., VOR; 16,100. *13,200—MCA Durango VOR, northbound. **12,500—MCA Gunnison VOR, southbound.

From, to, and MEA

Section 95.6431 *VOR Federal airway 431* is amended to read:

Cambridge, N.Y., VOR; Glens Falls, N.Y., VOR; 3,900.
Glens Falls, N.Y., VOR; Wilcox INT, N.Y.; 5,000.

Section 95.6438 *VOR Federal airway 438* is amended to read in part:

Anchorage, Alaska, VOR; Talkeetna, Alaska, VOR; 3,000. *Talkeetna, Alaska, VOR; Ferry INT, Alaska; 10,000. *6,000—MCA Talkeetna VOR, northbound.

Section 95.6443 *VOR Federal airway 443* is amended to read in part:

Tiverton, Ohio, VOR; Cleveland, Ohio, VOR; *3,000. *2,400—MOCA.

Section 95.6444 *VOR Federal airway 444* is amended by adding:

Fairbanks, Alaska, ILS/LMM; Big Delta, Alaska, VOR; 5,500.

Section 95.6472 *VOR Federal airway 472* is amended to read:

Franklin, VA., VOR; *Sunbury INT, N.C.; **2,500. *2,500—MRA. **1,400—MOCA.
Sunbury INT, N.C.; Elizabeth City, N.C., VOR; *2,500. *1,400—MOCA.

Section 95.6487 *VOR Federal airway 487* is amended to read in part:

Poughkeepsie, N.Y., VOR; Hillsdale INT, N.Y.; 4,600.
Hillsdale INT, N.Y.; Brainard INT, N.Y.; 4,000.
Brainard INT, N.Y.; Cambridge, N.Y., VOR; 4,400.
Cambridge, N.Y., VOR; Granville INT, N.Y.; 4,000.
Granville INT, N.Y.; Benson INT, Vt.; 4,000. *3,500—MOCA.

Section 95.6489 *VOR Federal airway 489* is amended to read in part:

Clermont, N.Y., VOR; Red Hook INT, N.Y.; 2,600.
Red Hook, INT, N.Y.; Athens INT, N.Y.; *3,000. *2,400—MOCA.
Athens INT, N.Y.; Greenbush INT, N.Y.; *2,600. *1,900—MOCA.
Greenbush INT, N.Y.; Albany, N.Y., VOR; *2,300. *1,900—MOCA.
Glens Falls, N.Y., VOR; Crown INT, N.Y.; *6,000. *4,600—MOCA.

Section 95.6498 *VOR Federal airway 498* is amended to read:

McGrath, Alaska, VOR; Galena, Alaska, VOR; *6,000. *5,500—MOCA.

Section 95.6507 *VOR Federal airway 507* is amended to read in part:

Lovelock, Nev., VOR; Sod House, Nev., VOR; *10,000. *9,600—MOCA.

Section 95.6802 *VOR Federal airway 802* is amended to read in part:

Bible Grove, Ill., VOR; Lewis, Ind., VOR; 2,500.

Section 95.6805 *VOR Federal airway 805* is amended to read in part:

Wilmington, N.C., VOR; *Green INT, S.C.; **1,600. *2,500—MRA. **1,400—MOCA.
Green INT, S.C.; *Crescent INT, S.C.; **1,600. *3,000—MRA. **1,400—MOCA.
Crescent INT, S.C.; Myrtle Beach, S.C., VOR; *1,600. *1,400—MOCA.

Section 95.6806 *VOR Federal airway 806* is amended to read in part:

Flat Rock, Va., VOR; Amelia INT, Va.; 2,000.

From, to, and MEA

Section 95.6810 *VOR Federal airway 810* is amended to read in part:

Chadron, Nebr., VOR; O'Neill, Nebr., VOR; *10,000. *5,900—MOCA.

Section 95.6819 *VOR Federal airway 819* is amended to read in part:

Alma, Ga., VOR; Dublin, Ga., VOR; *2,200. *1,600—MOCA.

Section 95.6837 *VOR Federal airway 837* is amended to read in part:

Picayune, Miss., VOR; Greene County, Miss., VOR; *2,000. *1,500—MOCA.

Section 95.6846 *VOR Federal airway 846* is amended to read in part:

Wolbach, Nebr., VOR; Int. 047° M rad, Hayes Center VOR, and 079° M rad, North Platte VOR; *5,000. *3,700—MOCA.
Int. 047° M rad, Hayes Center VOR, and 079° M rad, North Platte VOR; Hayes Center, Nebr., VOR; *5,000. *4,100—MOCA.

Section 95.6854 *VOR Federal airway 854* is amended to read in part:

O'Neill, Nebr., VOR; Chadron, Nebr., VOR; *10,000. *5,900—MOCA.

Section 95.6881 *VOR Federal airway 881* is amended to read in part:

Cleveland, Ohio, VOR; Tiverton, Ohio, VOR; *3,000. *2,400—MOCA.

Section 95.7010 *Jet route No. 10* is amended by adding:

From, to, MEA, and MAA

Denver, Colo., VORTAC; Sidney, Nebr., VOR; 18,000; 45,000.
Sidney, Nebr., VOR; O'Neill, Nebr., VORTAC; 18,000; 45,000.

Section 95.7033 *Jet route No. 33* is added to read:

Oakland, Calif., VORTAC; Ukiah, Calif., VORTAC; 18,000; 45,000.
Ukiah, Calif., VORTAC; Fortuna, Calif., VOR; 18,000; 45,000.
Fortuna, Calif., VOR; North Bend, Oreg., VOR; 18,000; 45,000.
North Bend, Oreg., VOR; Newport, Oreg., VORTAC; 18,000; 45,000.
Newport, Oreg., VORTAC; Hoquiam, Wash., VOR; 18,000; 45,000.
Hoquiam, Wash., VOR; Seattle, Wash., VORTAC; 18,000; 45,000.

Section 95.7052 *Jet route No. 52* is amended by adding:

Florence, S.C., VOR; Raleigh-Durham, N.C., VORTAC; 18,000; 45,000.

Section 95.7064 *Jet route No. 64* is amended to read in part:

Alamosa, Colo., VOR; Hill City, Kans., VORTAC; 24,000; 45,000.

Section 95.7078 *Jet route No. 78* is amended to read in part:

Tulsa, Okla., VORTAC; Farmington, Mo., VORTAC; 24,000; 45,000.

Section 95.7083 *Jet route No. 83* is added to read:

Knoxville, Tenn., VORTAC; Appleton, Ohio, VORTAC; 18,000; 45,000.
Appleton, Ohio, VORTAC; Cleveland, Ohio, VORTAC; 18,000; 45,000.

Section 95.7108 *Jet route No. 108* is added to read:

Winslow, Ariz., VORTAC; St. Johns, Ariz., VORTAC; 18,000; 45,000.

Section 95.7112 *Jet route No. 112* is added to read:

From, to, MEA, and MAA

Butler, Mo., VOR; Farmington, Mo., VORTAC; 18,000; 45,000.
Farmington, Mo., VORTAC; Louisville, Ky., VORTAC; 18,000; 45,000.

Section 95.7551 *Jet route No. 551* is added to read:

Peck, Mich., VOR; United States-Canadian border; 18,000; 45,000.

Section 95.7575 *Jet route No. 575* is amended by adding:

Boston, Mass., VOR; United States-Canadian border; 18,000; 45,000.

Section 95.7585 *Jet route No. 585* is added to read:

Nantucket, Maine, VOR; United States-Canadian border; 18,000; 45,000.

2. By amending Subpart D as follows:

§ 95.8003 VOR Federal airway changeover points.

Airway segment: From; to—Changeover point: distance; from

V–8 is amended to read in part:
Ontario, Calif., VOR; Hector, Calif., VOR; 46; Ontario.
V–16 is amended to delete:
Texarkana, Ark, VOR; Pine Bluff, Ark., VOR; 53; Texarkana.
V–16 is amended to read in part:
Ontario, Calif., VOR; Palm Springs, Calif., VOR; 23; Palm Springs.
V–21 is amended to read in part:
Ontario, Calif., VOR; Hector, Calif., VOR; 46; Ontario.
V–105 is amended to read in part:
Coaldale, Nev., VOR; Reno, Nev., VOR; 55; Coaldale.
V–137 is amended to delete:
Thermal, Calif., VOR; Palmdale, Calif., VOR; 59; Thermal.
V–161 is amended to delete:
Ardmore, Okla., VOR; Okmulgee, Okla., VOR; 59; Ardmore.
V–264 is amended to read in part:
Ontario, Calif., VOR, via S alter.; Palm Springs, Calif., VOR, via S alter.; 23; Palm Springs.
V–485 is amended to delete:
Los Banos, Calif., VOR; Oakland, Calif., VORTAC; 35; Los Banos.
J–15 is amended by adding:
Farmington, N. Mex., VORTAC; Grand Junction, Colo., VORTAC; 90; Farmington.
J–23 is amended to delete:
San Antonio, Tex., VORTAC; Mineral Wells, Tex., VORTAC; 106; San Antonio.
J–30 is amended by adding:
Appleton, Ohio, VORTAC; Front Royal, Va., VOR; 112; Appleton.
J–64 is amended by adding:
Ellwood City, Pa., VORTAC; Yardley, Pa., VOR; 145; Ellwood City.
J–89 is amended by adding:
Atlanta, Ga., VORTAC; Louisville, Ky., VORTAC; 130; Atlanta.
J–96 is amended by adding:
Seattle, Wash., VORTAC; United States-Canadian border; 97; Seattle.
J–110 is amended by adding:
Alamosa, Colo., VOR; Garden City, Kans., VORTAC; 101; Alamosa.

This amendment is made under the authority of sections 307 and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 1510).

Issued in Washington, D.C., on October 23, 1964.

G. S. MOORE,
Director, Flight Standards Service.

[F.R. Doc. 64–11080; Filed, Oct. 30, 1964; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 15—CEREAL FLOURS AND RELATED PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

Instant Blending Flours; Order Establishing Definition and Standard of Identity

A notice of proposed rulemaking was published in the FEDERAL REGISTER of May 15, 1964 (29 F.R. 6405), setting forth a proposal by General Mills, Inc., and the Pillsbury Company, both of Minneapolis, Minnesota, to establish a definition and standard of identity for instant blending flours. Within the 30 days provided for submission of views on the proposal comments were received from one State official and from six firms engaged in the flour-milling business. The State official and all the firms favored the establishment of a definition and standard of identity for a form of flour that is characterized by its lack of dustiness, its tendency to disperse in liquids more readily, its pourability and ease of measuring. Five of the firms, however, stated that the agglomeration process is not the only process for making a flour product with these characteristics, and they protested exclusion from the standard of such a form of flour as made by a procedure referred to as a "selective grinding and bolting procedure." Some of the firms objected to the names proposed for this form of flour and some suggested alternative names.

On the basis of relevant information available, taking into consideration the comments filed, it is concluded that it will promote honesty and fair dealing in the interest of consumers to establish a definition and standard of identity for this form of flour and to provide that it may be made by either the agglomeration procedure or by the selective grinding and bolting procedure. Therefore, pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919; 72 Stat. 948; 21 U.S.C. 341, 371) and delegated to the Commissioner of Food and Drugs (21 CFR 2.90; 29 F.R. 471); *It is ordered*, That Part 15 be amended by adding a new section reading as follows:

§ 15.75 Instantized flours, instant blending flours, quick mixing flours; identity; label statement of optional ingredients.

(a) Instantized flours, instant blending flours, quick mixing flours, are the foods each of which conforms to the definition and standard of identity and is subject to the requirement for label statement of optional ingredients prescribed for the corresponding kind of flour by § 15.1, § 15.10, § 15.20, or § 15.30, except that each such flour has been made by one of the optional procedures set forth in paragraph (b) of this section. Such flour will all pass through a No. 20 Mesh U.S. Standard Sieve (840 micron opening) and not more than 20 percent will pass through a No. 200 Mesh U.S. Standard Sieve (74 micron opening).

(b) The optional procedures referred to in paragraph (a) of this section are:

(1) A selective grinding and bolting procedure, whereby controlled milling techniques are used to obtain flour particles too coarse to meet the granulation specification prescribed in § 15.1(a) for flour, and too fine to meet the granulation specification prescribed in § 15.130 (a) for farina.

(2) An agglomerating procedure, whereby flour that originally meets the granulation specification prescribed in § 15.1(a) has been modified by further processing so that a number of the individual flour particles have been combined into agglomerates conforming to the granulation specifications set out in paragraph (a) of this section.

(c) The name of each product covered by this section is the name prescribed by the definition and standard of identity for the corresponding kind of flour as referred to in paragraph (a) of this section, preceded immediately and conspicuously by the words, "Instantized," "Instant blending," or "Quick mixing."

Any person who will be adversely affected by the foregoing order may at any time within 30 days following the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C., 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing, and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 948; 21 U.S.C. 341, 371)

Dated: October 23, 1964.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 64–11112; Filed, Oct. 30, 1964; 8:46 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

POLYURETHANE RESINS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 5B1494) filed by Spencer Kellogg Division of Textron, Inc., 4201 Genesee Street, Buffalo, New York, 14225, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of *N*-dodecylmorpholine as a catalyst for polyurethane resins that contact dry bulk food. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), paragraph (a)(4) of § 121.2522 is amended by changing the item "Polyurethane, derived by reaction * * *" to read as follows:

§ 121.2522 Polyurethane resins.

* * * * *

(a) * * *

(4) * * *

List of substances:	*Limitations*
Polyurethane, derived by reaction of toluene diisocyanate and/or diphenylmethane diisocyanate with one or more of the following substances, with or without the catalysts *N,N*-dimethyldodecylamine, and *N*-dodecylmorpholine:	* * *
Adipic acid.	
1,4-Butanediol.	
Polypropylene glycol.	
Trimethylol propane.	

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)).

Dated: October 26, 1964.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 64-11113; Filed, Oct. 30, 1964; 8:47 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 6766]

PART 301—PROCEDURE AND ADMINISTRATION

Miscellaneous Amendments

On July 3, 1964, notice of proposed rule making with respect to the amendment of the Regulations on Procedure and Administration (26 CFR Part 301) under section 7701 of the Internal Revenue Code of 1954 to conform the regulations to section 6(c) of the Revenue Act of 1962 (76 Stat. 982), relating to definition of domestic building and loan association, and to section 5 of the Act of October 23, 1962 (Public Law 87-870, 76 Stat. 1161), relating to definition of cooperative bank, was published in the FEDERAL REGISTER (29 F.R. 8422). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are adopted.

PARAGRAPH 1. Section 301.7701 is amended by revising paragraph (19) of section 7701(a), adding a paragraph (32) to section 7701(a), and by revising the historical note. These amended and added provisions read as follows:

§ 301.7701 Statutory provisions; definitions.

Sec. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(19) *Domestic building and loan association.* The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) Which either (i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) Substantially all of the business of which consists of acquiring the savings of the public and investing in loans described in subparagraph (C);

(C) At least 90 percent of the amount of the total assets of which (as of the close of the taxable year) consists of (i) cash, (ii) obligations of the United States or of a State or political subdivision thereof, stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, and certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations, (iii) loans secured by an interest in real property and loans made for the improvement of real property, (iv) loans secured by a deposit or share of a member, (v) property acquired through the liquidation of defaulted loans described in clause (iii), and (vi) property used by the association in the conduct of the business described in subparagraph (B);

(D) Of the assets of which taken into account under subparagraph (C) as assets constituting the 90 percent of total assets—

(i) At least 80 percent of the amount of such assets consists of assets described in clauses (i), (ii), (iv), and (vi) of such subparagraph and of loans secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, or property acquired through the liquidation of defaulted loans described in this clause; and

(ii) At least 60 percent of the amount of such assets consists of assets described in clauses (i), (ii), (iv), and (vi) of such subparagraph and of loans secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property containing 4 or fewer family units or real property used primarily for church purposes, loans made for the improvement of residential real property containing 4 or fewer family units or real property used primarily for church purposes, or property acquired through the liquidation of defaulted loans described in this clause;

(E) Not more than 18 percent of the amount of the total assets of which (as of the close of the taxable year) consists of assets other than those described in clause (i) of subparagraph (D), and not more than 36 percent of the amount of the total assets of which (as of the close of the taxable year) consists of assets other than those described in clause (ii) of subparagraph (D); and

(F) Except for property described in subparagraph (C), not more than 3 percent of the assets of which consists of stock of any corporation.

The term "domestic building and loan association" also includes any association which, for the taxable year, would satisfy the requirements of the first sentence of this paragraph if "41 percent" were substituted for "36 percent" in subparagraph (E). Except in the case of the taxpayer's first taxable year beginning after the date of the enactment of the Revenue Act of 1962, the second sentence of this paragraph shall not apply to an association for the taxable year unless such association (i) was a domestic building and loan association within the meaning of the first sentence of this paragraph for the first taxable year preceding the taxable year, or (ii) was a domestic building and loan association solely by reason of the second sentence of this paragraph for the first taxable year preceding the taxable year (but not for the second preceding taxable year). At the election of the taxpayer, the percentages specified in this paragraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary or his delegate.

* * * * *

(32) *Cooperative bank.* The term "cooperative bank" means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A) Either—

(i) Is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii) Is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B) Meets the requirements of subparagraphs (B), (C), (D), (E), and (F) of paragraph (19) of this subsection (relating to definition of domestic building and loan association) determined with the application of the second, third, and fourth sentences of paragraph (19).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution. In the case of an institution which, for the taxable year, is a cooperative bank within the meaning of the first sentence of this paragraph by reason of the application of the second and third sentences of paragraph (19) of this subsection, the deduction otherwise allowable under section 166(c) for a reasonable addition to the reserve for bad debts shall, under regulations prescribed by the Secretary or his delegate, be reduced in a manner consistent with the reductions provided by the table contained in section 593(b)(5).

[Sec. 7701, as amended by sec. 22 (g), (h), Alaska Omnibus Act (73 Stat. 146, 147); sec. 18 (i), (j), Hawaii Omnibus Act (74 Stat. 416); sec. 103(t), Social Security Amendments 1960 (74 Stat. 941); sec. 6(c), Rev. Act 1962 (76 Stat. 982); sec. 5, Act of Oct. 23, 1962 (Pub. Law 87-870, 76 Stat. 1161)]

PAR. 2. Section 301.7701-13 is renumbered and amended to read as follows:

§ 301.7701-15 Other terms.

Any terms which are defined in section 7701 and which are not defined in §§ 301.7701-1 to 301.7701-14, inclusive, shall, when used in this chapter, have the meanings assigned to them in section 7701.

PAR. 3. Immediately after § 301.7701-12 there are inserted the following new sections:

§ 301.7701-13 Domestic building and loan association.

(a) *In general.* For taxable years beginning after October 16, 1962, the term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, a Federal savings and loan association, and any other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law which meets the supervisory test (described in paragraph (b) of this section), the business operations test (described in paragraph (c) of this section), and each of the various assets tests (described in paragraphs (d), (e), (f), and (h) of this section).

(b) *Supervisory test.* A domestic building and loan association must be either (1) an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)) or (2) subject by law to supervision and examination by State or Federal authority having supervision over such associations. An "insured institution" is one the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

(c) *Business operations test*—(1) *In general.* An association must utilize its assets so that substantially all of its business consists of acquiring the savings of the public and investing in the loans described in subparagraphs (6) through (10) of paragraph (d) of this section. The requirement of this paragraph is referred to in this section as the business operations test. The business of acquiring the savings of the public and investing in the prescribed loans includes ancillary or incidental activities which are directly and primarily related to such acquisition and investment, such as advertising for savings, appraising property on which loans are to be made by the association, and inspecting the progress of construction in connection with construction loans. Even though an association meets the supervisory test in paragraph (b) and all the assets tests described in paragraph (d) through (h) of this section, it will nevertheless not qualify as a domestic building and loan association if any substantial part of its business consists of activities which are not directly and primarily related to such acquisition and investment, such as brokering mortgage paper, selling insurance, or subdividing real estate. However, an association will meet the business operations test for a taxable year if it meets the requirements of both subparagraphs (2) and (3) of this paragraph, relating respectively to acquiring the savings of the public, and investing in loans.

(2) *Acquiring the savings of the public.* The requirement that substantially all of an association's business (other than investing in loans) must consist of acquiring the savings of the public ordinarily will be considered to be met if savings are acquired in all material respect in conformity with the rules and regulations of the Federal Home Loan Bank Board or substantially equivalent rules of a State law or supervisory authority. In addition, such requirement will be considered to be met if more than 85 percent of the dollar amount of the total deposits and withdrawable shares of the association are held during the taxable year by the general public as opposed to amounts deposited by family or related business groups or persons who are officers or directors of the association. The percentage specified in this subparagraph shall be computed as of the close of the taxable year, or at the option of the taxpayer, on the basis of the average of the amounts of deposits held during the year. Such average shall be determined by computing the percentage specified either as of the close of each month, as of the close of each quarter, or semiannually during the taxable year and by using the yearly average of the monthly, quarterly, or semiannual percentages obtained.

(3) *Investing in loans*—(i) *In general.* The requirement that substantially all of an association's business (other than acquiring the savings of the public) must consist of investing in the loans described in subparagraphs (6) through (10) of paragraph (d) of this section ordinarily will be considered to be met for a taxable year if the association meets both the gross income test described in subdivision (ii) of this subparagraph and the sales activity test described in subdivision (iii) of this subparagraph. However, if an association does not meet the requirements of both subdivisions (ii) and (iii) of this subparagraph, it will nevertheless meet the investing in loans requirement if it is able to demonstrate that substantially all its business (other than acquiring the savings of the public) consisted of investing in the prescribed loans. Transactions which are necessitated by exceptional circumstances and which are not undertaken as recurring business activities for profit will not be considered a substantial part of an association's business. Thus, for example, an association would meet the investing in loans requirement if it can establish that it failed to meet the gross income test because of receipt of a non-recurring item of income due to exceptional circumstances, or it failed to meet the sales activity test because of sales made to achieve necessary liquidity to meet abnormal withdrawals from savings accounts. For the purposes of this subparagraph, however, the acquisition of loans in anticipation of their sale to other financial institutions does not constitute "investing" in loans, even though such acquisition and sale resulted from an excess of demand for loans over savings capital in the association's area.

(ii) *Gross income test.* The gross income test is met if more than 85 percent of the gross income of an association consists of:

(*a*) Interest or dividends on assets defined in subparagraph (2), (3), or (4) of paragraph (d) of this section,

(*b*) Interest on loans defined in subparagraphs (6) through (10) of paragraph (d) of this section,

(*c*) Income attributable to the portion of property used in the association's business as defined in paragraph (d)(5) of this section,

(*d*) Premiums, discounts, commissions, or fees (including late charges and penalties) on loans defined in subparagraphs (6) through (10) of paragraph (d) of this section which have at some time been held by the association, or for which firm commitments have been issued,

(*e*) Gain or loss on the sale of governmental obligations defined in paragraph (d)(3) of this section, or

(*f*) Income, gain, or loss attributable to foreclosed property (as defined in paragraph (j)(1) of this section), but not including such income, gain, or loss which, pursuant to section 595 and the regulations thereunder, is not included in gross income.

For the purposes of this subparagraph, gross income shall be computed without regard to gains or losses on the sale of the portion of property used in the association's business (described in paragraph (d)(5) of this section), without regard to gains or losses on the rented portion of property used as the principal or branch office of the association (de-

scribed in such paragraph), and without regard to gains or losses on the sale of participations and loans (other than governmental obligations defined in paragraph (d)(3) of this section). Examples of types of income which would cause an association to fail to meet the gross income test, if in the aggregate they exceed 15 percent of gross income, are the excess of gains over losses on sale of real estate (other than foreclosed property); rental income (other than on foreclosed property and the portion of property used in the association's business); premiums, commissions, and fees (other than commitment fees) on loans which have never been held by the association; and insurance brokerage fees.

(iii) *Sales activity test: in general.* The sales activity test is met for a taxable year if the association meets both the sales of whole loans test described in subdivision (iv) of this subparagraph, and the sales of whole loans and participations test described in subdivision (v) of this subparagraph. For the purposes of this subdivision and subdivisions (iv), (v), and (vi) of this subparagraph:

(*a*) The term "loan" means loan as defined in paragraph (j)(1) of this section, other than foreclosed property defined in such paragraph and governmental obligations defined in paragraph (d)(3) of this section.

(*b*) The amount of a loan shall be determined in accordance with the rules contained in paragraph (l)(1) and (2)(ii) of this section.

(*c*) The term "loans acquired for investment during the taxable year" means the amount of loans outstanding as of the close of the taxable year, reduced (but not below zero) by the amount of loans outstanding as of the beginning of such year, and increased by the lesser of (*1*) the amount of repayments made on loans during the taxable year or (*2*) an amount equal to 20 percent of the amount of loans outstanding as of the beginning of the taxable year. For this purpose, repayments do not include repayments on loans to the extent such loans are refinanced by the association.

(*d*) The term "sales of participations" means sales by an association of interests in loans, which sales meet the requirements of the regulations of the Federal Home Loan Bank Board relating to sales of participations, or which meet substantially equivalent requirements of State law or regulations relating to sales of participations.

(*e*) The term "sales of whole loans" means sales of loans other than sales of participations as defined in subdivision (*d*) of this subdivision, but in determining the amount of sales of whole loans, the following sales shall be disregarded: sales of loans made to other financial institutions pursuant to an arrangement whereunder the association simultaneously enters into a bona fide agreement to repurchase such loans within a period of 18 months from the time of sale if such arrangement conforms to the rules and regulations of applicable supervisory authorities; sales made to the Federal Savings and Loan Insurance Corporation or to a corporation defined in paragraph (d)(4) of this section (relating to deposit insurance company securities); and sales made in the course of liquidation of the association pursuant to Federal or State law.

(iv) *Sales of whole loans test.* The sales of whole loans test is met for a taxable year if the amount of sales of whole loans during the taxable year does not exceed the greater of (*a*) 15 percent of the amount of loans acquired for investment during the taxable year, or (*b*) 20 percent of the amount of loans outstanding at the beginning of the taxable year. However, the 20 percent of beginning loans limitation specified in subdivision (*b*) of the previous sentence shall be reduced by the number of percentage points (rounded to the nearest one hundredth of a percentage point) which is equal to the sum of the two percentages obtained by dividing, for each of the two preceding taxable years, the amount of sales of whole loans during each such taxable year by the amount of loans outstanding at the beginning of such taxable year. For example, if the amounts of sales of whole loans made by a calendar year association in 1965 and 1966 were 3 percent and 4 percent, respectively, of loans outstanding at the beginning of each such year, the amount of sales of whole loans allowed under such subdivision (*b*) for 1967 would be an amount equal to 13 percent (20 percent minus 7 percentage points) of loans outstanding at the beginning of 1967. In computing the reduction to the 20 percent of beginning loans limitation specified in such subdivision (*b*), sales of whole loans made before January 1, 1964, shall not be taken into account.

(v) *Sales of whole loans and participations test.* The sales of whole loans and participations test is met if the sum of the amount of sales of whole loans and the amount of sales of participations during the taxable year does not exceed 100 percent of the amount of loans acquired for investment during the taxable year.

(vi) *Sales activity test: special rules—(a) Carryover of sales.* The amount specified in subdivision (iv)(*a*) of this subparagraph as the maximum amount of sales of whole loans shall be increased by the amount by which 15 percent of the amount of loans acquired for investment by the association during the two preceding taxable years exceeds the amount of sales of whole loans made during such preceding taxable years; and the amount specified in subdivision (v) of this subparagraph as the maximum amount of sales of whole loans and participations shall be increased by the amount by which the amount of loans acquired for investment by the association during the two preceding taxable years exceeds the sum of the amount of sales of whole loans and participations made during such preceding taxable years. For example, if 15 percent of the amount of loans acquired for investment in 1965 and 1966 exceeded the amount of sales of whole loans during such years by $250,000, the amount of sales of whole loans permitted in 1967 under subdivision (iv)(*a*) of this subparagraph would be increased by $250,000.

(*b*) *Use of preceding year's base.* If the amount of loans acquired for investment by the association during the preceding taxable year exceeds such amount for the current taxable year, the 15 percent limitation provided in subdivision (iv)(*a*) of this subparagraph and the 100 percent limitation provided in subdivision (v) of this subparagraph shall be based upon such preceding taxable year's amount. However, the maximum amount of sales of whole loans permitted under subdivision (iv)(*a*) and the maximum amount of sales of whole loans and participations permitted under subdivision (v) in any taxable year shall be reduced by the amount of the increase in such sales allowed for the preceding taxable year solely by reason of the application of the provisions of the previous sentence. For example, assuming no carryover of sales under subdivision (*a*) of this subdivision, if the amount of loans acquired for investment by a calendar year association was $1,000,000 in 1965, under subdivision (iv)(*a*) of this subparagraph the association could make sales of whole loans in 1966 of $150,000 (15% of $1,000,000) even though the amount of its loans acquired for investment during 1966 was only $800,000. However, the amount of sales of whole loans permitted in 1967 under subdivision (iv)(*a*) of this subparagraph would be reduced to the extent that the amount of the sales of whole loans made by the association during 1966 exceeded $120,000 (15% of $800,000).

(vii) *Examples illustrating sales activity test.* The provisions of subdivisions (iii) through (vi) of this subparagraph may be illustrated by the following examples in each of which it is assumed that the association is a calendar year taxpayer which is operated in all material respects in conformity with applicable rules and regulations of Federal or State supervisory authorities.

Example (1). X Association made sales of whole loans in 1964 and 1965 which were 10 percent and 7 percent, respectively, of the amounts of loans outstanding at the beginning of each such year, and which were 25 percent and 17 percent, respectively, of the amounts of loans acquired for investment in each such year. The amount of X's loans outstanding at the beginning of 1966 was $1,000,000, and the amount of its loans acquired for investment for such year was $300,000. The maximum amount of sales of whole loans which X may make under the percentage of beginning loans limitation for 1966 is $30,000, which is 3 percent (20 percent reduced by the sum of 10 percent and 7 percent) of $1,000,000. The maximum amount of sales of whole loans permitted under the percentage of loans acquired for investment limitation for 1966 is $45,000 (15 percent of $300,000). X may therefore sell whole loans in an amount up to $45,000 in 1966 and meet the sales of whole loans test. It is assumed that the amount of loans acquired for investment in 1965 did not exceed $300,000, so that the preceding year's base cannot be used to increase the amount of sales permitted in 1966.

Example (2). Assume the same facts as in the previous example, except that the amount of loans acquired for investment in the preceding year (1965) was $320,000. Since such amount is greater than the $300,000 amount of loans acquired for investment in 1966, X may base its 15 percent limitation for 1966 on the $320,000 amount and sell whole loans

in an amount up to $48,000 (15 percent of $320,000) and still meet the sales of whole loans test. However, to the extent that the amount of sales of whole loans exceeds $45,000 (15 percent of the $300,000 amount of loans acquired for investment in 1966), the maximum amount of sales computed under the percentage of loans acquired for investment limitation (but not the 20 percent of beginning loans limitation) for 1967 must be reduced.

Example (3). Y Association made no sales of whole loans in 1964 and 1965, and made sales of participations in the two years in amounts which, in the aggregate, were $50,000 less than the amounts of loans acquired for investment for such years. At the beginning of 1966 the amount of Y's loans outstanding was $1,000,000, and the amount of its loans acquired for investment in such year was $100,000. Although the maximum amount of sales of whole loans which Y could make under the sales of whole loans test is $200,000 (20 percent of $1,000,000), nevertheless, in order to meet the sales of whole loans and participations test, the sum of the amounts of sales of whole loans and sales of participations may not exceed $150,000 (100 percent of the $100,000 amount of loans acquired for investment in 1966 plus a carryover of sales from the previous two years of $50,000). It is assumed that the amount of loans acquired for investment in 1965 did not exceed $100,000, so that the preceding year's base cannot be used to increase the amount of sales permitted in 1966.

(viii) *Reporting requirements.* In the case of income tax returns for taxable years ending after October 31, 1964, there shall be filed with the return a statement showing the amount of gross income for the taxable year in each of the categories described in subdivision (ii) of this subparagraph; and, for the taxable year and the two preceding taxable years, the amount of loans (described in subdivision (iii)(*a*) of this subparagraph) outstanding at the beginning of the year and at the end of the year, the amount of repayments on loans (not including repayments on loans to the extent such loans are refinanced by the association), the amount of sales of whole loans, and the amount of sales of participations.

(4) *Effective date.* The provisions of subparagraphs (1) through (3) of this paragraph are applicable to taxable years ending after October 31, 1964. However, at the option of the taxpayer, for a taxable year beginning before November 1, 1964, and ending after October 31, 1964, the provisions of subparagraphs (1) through (3) of this paragraph (except the 20 percent of beginning loans limitation specified in subdivision (iv)(*b*) of subparagraph (3) of this paragraph) shall apply only to the part year falling after October 31, 1964, as if such part year constituted a taxable year. In such case, the following rules shall apply:

(i) The amount of the "loans acquired for investment" for such part year shall be equal to the loans acquired for investment during the entire taxable year within which falls such part year, multiplied by a fraction the numerator of which is the number of days in such part year and the denominator of which is the number of days in such entire taxable year.

(ii) The increase in sales of whole loans and participations permitted by subdivision (vi) of subparagraph (3) of this paragraph (relating to carryover of sales and use of preceding year's base) shall be the amount of such increase computed under such subdivision, multiplied by the fraction specified in subdivision (i) of this subparagraph.

If, treating the part year as a taxable year, the association meets all the requirements of this paragraph for such part year it will be considered to have met the business operations test for the entire taxable year, providing it operated in all material respects in conformity with applicable rules and regulations of Federal or State supervisory authorities for the entire taxable year. The 20 percent of beginning loans limitation specified in subdivision (iv)(*b*) of subparagraph (3) of this paragraph shall be applied only on the basis of a taxable year and not the part year. For taxable years beginning after October 16, 1962, and ending before November 1, 1964, an association will be considered to have met the business operations test if it operated in all material respects in conformity with applicable rules and regulations of Federal or State supervisory authorities.

(d) *90 percent of assets test*—(1) *In general.* At least 90 percent of the amount of the total assets of a domestic building and loan association must consist of the assets defined in subparagraphs (2) through (10) of this paragraph. For purposes of this paragraph, it is immaterial whether the association originated the loans defined in subparagraphs (6) through (10) of this paragraph or purchased or otherwise acquired them in whole or in part from another. See paragraph (j) of this section for definition of certain terms used in this paragraph, and paragraph (k) of this section for the determination of amount and character of loans.

(2) *Cash.* The term "cash" means cash on hand, and time or demand deposits with, or withdrawable accounts in, other financial institutions.

(3) *Governmental obligations.* The term "governmental obligations" means obligations of the United States, a State or political subdivision of a State, and stock or obligations of a corporation which is an instrumentality of the United States, a State, or political subdivision of a State.

(4) *Deposit insurance company securities.* The term "deposit insurance company securities" means certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations.

(5) *Property used in the association's business*—(i) *In general.* The term "property used in the association's business" means land, buildings, furniture, fixtures, equipment, leasehold interests, leasehold improvements, and other assets used by the association in the conduct of its business of acquiring the savings of the public and investing in the loans defined in subparagraphs (6) through (10) of this paragraph. Real property held for the purpose of being used primarily as the principal or branch office of the association constitutes property used in the association's business so long as it is reasonably anticipated that such property will be occupied for such use by the association, or that construction work preparatory to such occupancy will be commenced thereon, within two years after acquisition of the property. Stock of a wholly owned subsidiary corporation which has as its exclusive activity the ownership and management of property more than 50 percent of the fair rental value of which is used as the principal or branch office of the association constitutes property used in such business. Real property held by an association for investment or sale, even for the purpose of obtaining mortgage loans thereon, does not constitute property used in the association's business.

(ii) *Property rented to others.* Except as provided in the second sentence of subdivision (i) of this subparagraph, property or a portion thereof rented by the association to others does not constitute property used in the association's business. However, if the fair rental value of the rented portion of a single piece of real property (including appurtenant parcels) used as the principal or branch office of the association constitutes less than 50 percent of the fair rental value of such piece of property, or if such property has an adjusted basis of not more than $150,000, the entire property shall be considered used in such business. If such rented portion constitutes 50 percent or more of the fair rental value of such piece of property, and such property has an adjusted basis of more than $150,000, an allocation of its adjusted basis is required. The portion of the total adjusted basis of such piece of property which is deemed to be property used in the association's business shall be equal to an amount which bears the same ratio to such total adjusted basis as the amount of the fair rental value of the portion used as the principal or branch office of the association bears to the total fair rental value of such property. In the case of all property other than real property used or to be used as the principal or branch office of the association, if the fair rental value of the rented portion thereof constitutes less than 15 percent of the fair rental value of such property, the entire property shall be considered used in the association's business. If such rented portion constitutes 15 percent or more of the fair rental value of such property, an allocation of its adjusted basis (in the same manner as required for real property used as the principal or branch office) is required.

(6) *Passbook loan.* The term "passbook loan" means a loan to the extent secured by a deposit, withdrawable share, or savings account in the association, or share of a member of the association, with respect to which a distribution is allowable as a deduction under section 591.

(7) *Home loan.* The term "home loan" means a loan secured by an interest in—

(i) Improved residential real property consisting of a structure or struc-

tures containing, in the aggregate, no more than 4 family units,

(ii) An individually owned family unit in a multiple-unit structure, the owner of which unit owns an undivided interest in the underlying real estate and the common elements of such structure (so-called condominium type),

or a construction loan or improvement loan for such property. A construction loan made for the purpose of financing more than one structure (so-called tract financing) constitutes a home loan, providing no individual structure contains more than 4 family units and it is contemplated that, as soon as possible after completion of construction, the structures will become property described in subdivision (i) of this subparagraph. A construction loan secured by a structure containing more than 4 family units constitutes a home loan only if the structure has been committed to a plan of individual apartment ownership described in subdivision (ii) of this subparagraph and such plan is held out and advertised as such. A loan secured by a cooperative apartment building containing more than 4 family units does not constitute a home loan.

(8) *Church loan.* The term "church loan" means a loan secured by an interest in real property which is used primarily for church purposes, or a construction loan or improvement loan for such property. For the purposes of this subparagraph, the term "church purposes" means the ministration of sacerdotal functions, the conduct of religious worship and closely associated activities designed primarily to provide fellowship among members of the congregation, or the instruction of religion. Thus, a parish hall would normally qualify as property used primarily for church purposes, whereas a building used primarily to furnish education, other than the instruction of religion, would not.

(9) *Multifamily loan.* The term "multifamily loan" means a loan, other than one defined in subparagraph (7) of this paragraph (relating to a home loan), secured by an interest in improved residential real property or a construction loan or improvement loan for such property.

(10) *Nonresidential real property loan.* The term "nonresidential real property loan" means a loan, other than one defined in subparagraph (7), (8), or (9) of this paragraph (relating respectively to a home loan, church loan, and multifamily loan) secured by an interest in real property, or a construction loan or improvement loan for such property.

(e) *18 percent of assets test.* Not more than 18 percent of the amount of the total assets of a domestic building and loan association may consist of assets other than those defined in subparagraphs (2) through (9) of paragraph (d) of this section. Thus, the sum of the amounts of the nonresidential real property loans and the assets other than those defined in paragraph (d) of this section may not exceed 18 percent of total assets.

(f) *36 or 41 percent of assets test—*(1) *36 percent test.* Unless subparagraph (2) of this paragraph applies, not more than 36 percent of the amount of the total assets of a domestic building and loan association may consist of assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section. Thus, unless subparagraph (2) of this paragraph applies, the sum of the amounts of multifamily loans, nonresidential real property loans, and assets other than those defined in paragraph (d) of this section may not exceed 36 percent of total assets.

(2) *41 percent test.* If this subparagraph applies, not more than 41 percent of the amount of the total assets of a domestic building and loan association may consist of assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section. Thus, if this subparagraph applies, the sum of the amounts of multifamily loans, nonresidential real property loans, and assets other than those defined in paragraph (d) of this section may not exceed 41 percent of total assets. See section 593(b)(5) and the regulations thereunder for the effect of application of this subparagraph on the allowable addition to the reserves for bad debts.

(g) *Taxable years for which 41 percent of assets test applies—*(1) *First taxable year.* For an association's first taxable year beginning after October 16, 1962, subparagraph (2) of paragraph (f) applies.

(2) *Second taxable year.* For an association's second taxable year beginning after October 16, 1962, subparagraph (2) of paragraph (f) applies if such association met all the requirements of paragraphs (b) through (e), (h), and either subparagraph (1) or (2) of paragraph (f) for its first taxable year.

(3) *Years other than first and second taxable years.* For any taxable year of an association beginning after October 16, 1962, other than its first and second taxable years beginning after such date, subparagraph (2) of paragraph (f) applies if such association met either—

(i) The requirements of paragraphs (b) through (e), (f)(1), and (h) of this section for the immediately preceding taxable year, or

(ii) The requirements of paragraphs (b) through (e), (f)(2), and (h) of this section for the immediately preceding taxable year, and the requirements of paragraphs (b) through (e), (f)(1), and (h) of this section for the second preceding taxable year.

Thus, in years other than its first and second taxable years beginning after October 16, 1962, an association may apply the 41 percent of assets test for two consecutive years, but only if it met the 36 percent test (and all other tests) for the year previous to the two consecutive years.

(4) *Examples.* The provisions of paragraph (f) and this paragraph may be illustrated by the following examples in each of which it is assumed that the association at all times meets all the requirements of paragraphs (b) through (e) and (h) of this section and files its returns on a calendar year basis.

Example (1). An association has 41 percent of its assets invested in assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section as of the close of 1963 and 1964. Because 1963 is its first taxable year beginning after October 16, 1962, the 41 percent of assets test applies, and the association therefore qualifies as a domestic building and loan association for 1963. Because 1964 is its second taxable year beginning after such date and the 41 percent of assets test applied for its first taxable year, the 41 percent of assets test applies for 1964 and it therefor qualifies for such year.

Example (2). An association has 36 percent of its assets invested in assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section as of the close of 1964, and 41 percent as of the close of 1965, 1966, and 1967. The association qualifies in 1965 because, as a result of having met the 36 percent of assets test for the immediately preceding taxable year (1964), the 41 percent of assets test applies to 1965. It qualifies in 1966 because as a result of having met the 41 percent of assets test in the immediately preceding taxable year (1965) and the 36 percent of assets test in the second preceding taxable year (1964), the 41 percent of assets test applies to 1966. The association would not qualify in 1967, however, because, although it met the 41 percent of assets test for the immediately preceding taxable year (1966), it did not meet the 36 percent of assets test in the second preceding taxable year (1965), and therefore the 41 percent of assets test does not apply to 1967.

Example (3). An association has more than 41 percent of its assets invested in assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section as of the close of 1963, and 41 percent invested in such assets as of the close of 1964. The association does not qualify in either year. It does not qualify in 1963 because it exceeded the 41 percent limitation, and it does not qualify in 1964 because the 41 percent of assets test does not apply to 1964 since the association did not meet either the 41 percent of assets test or the 36 percent of assets test in the prior year (1963).

(h) *3 percent of assets test.* Not more than 3 percent of the amount of the total assets of a domestic building and loan association may consist of stock of any corporation, unless such stock is property which is defined in paragraph (d) of this section. The stock which constitutes property defined in such paragraph (d) is:

(1) Stock representing a withdrawable account in another financial institution;

(2) Stock of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof;

(3) Stock which was security for a loan and which, by reason of having been bid in at foreclosure or otherwise having been reduced to ownership or possession of the association, is a loan within the definition of such term in paragraph (j)(1) of this section; and

(4) Stock of a wholly owned subsidiary corporation which has as its exclusive activity the ownership and management of property more than 50 percent of the fair rental value of which is used as the principal or branch office of the association.

(i) [Reserved]

(j) *Definition of certain terms.* For purposes of this section—

(1) *Loan.* The term "loan" means debt, as the term "debt" is used in section 166 and the regulations thereunder. The term "loan" also includes a redeemable ground rent (as defined in section 1055(c)) which is owned by the taxpayer, and any property (referred to in this section as "foreclosed property") which was security for the payment of any indebtedness and which has been bid in at foreclosure, or otherwise been reduced to ownership or possession of the association by agreement or process of law, whether or not such property was acquired subsequent to December 31, 1962.

(2) *Secured.* A loan will be considered as "secured" only if the loan is on the security of any instrument (such as a mortgage, deed of trust, or land contract) which makes the interest of the debtor in the property described therein specific security for the payment of the loan, provided that such instrument is of such a nature that, in the event of default, the interest of the debtor in such property could be subjected to the satisfaction of the loan with the same priority as a mortgage or deed of trust in the jurisdiction in which the property is situated.

(3) *Interest.* The word "interest" means an interest in real property which, under the law of the jurisdiction in which such property is situated, constitutes either (i) an interest in fee in such property, (ii) a leasehold interest in such property extending or renewable automatically for a period of at least 30 years, or at least 10 years beyond the date scheduled for the final payment on a loan secured by an interest in such property, (iii) a leasehold interest in property described in paragraph (d)(7)(i) of this section (relating to certain home loans) extending for a period of at least two years beyond the date scheduled for the final payment on a loan secured by an interest in such property or (iv) a leasehold interest in such property held subject to a redeemable ground rent defined in section 1055(c).

(4) *Real property.* The term "real property" means any property which, under the law of the jurisdiction in which such property is situated, constitutes real property.

(5) *Improved real property.* The term "improved real property" means—

(i) Land on which is located any building of a permanent nature (such as a house, apartment house, office building, hospital, shopping center, warehouse, garage, or other similar permanent structure), provided that the value of such building is substantial in relation to the value of such land;

(ii) Any building lot or site which, by reason of installations and improvements that have been completed in keeping with applicable governmental requirements and with general practice in the community, is a building lot or site ready for the construction of any building of a permanent nature within the meaning of subdivision (i) of this subparagraph; or

(iii) Real property which, because of its state of improvement, produces sufficient income to maintain such real property and retire the loan in accordance with the terms thereof.

(6) *Construction loan.* The term "construction loan" means a loan, the proceeds of which are to be disbursed to the borrower (either by the association or a third party) as construction work progresses on real property which is security for the loan, which property is, or from the proceeds of such loan will become, improved real property.

(7) *Improvement loan.* The term "improvement loan" means a loan which, by its terms and conditions, requires that the proceeds of the loan be used for altering, repairing, or improving real property. If more than 85 percent of the proceeds of a single loan are to be used for such purposes, the entire loan will qualify. If 85 percent or less of the proceeds of a loan are to be used for such purposes, an allocation of its adjusted basis is required. Examples of loans which constitute improvement loans are loans made for the purpose of painting a house, adding a new room to a house, remodeling the lobby of an apartment building, and purchasing and installing storm windows, storm doors, and awnings. Examples of loans which do not constitute improvement loans are loans made for the purpose of purchasing draperies, and removable appliances, such as refrigerators, ranges, and washing machines. It is not necessary that a loan be secured by the real property which is altered, repaired, or improved.

(8) *Residential real property.* The term "residential real property" means real property which consists of one or more family units. A family unit is a building or portion thereof which contains complete living facilities which are to be used on other than a transient basis by only one family consisting of one or more persons. Thus, an apartment which is to be used on other than a transient basis by one family, which contains complete facilities for living, sleeping, eating, cooking, and sanitation constitutes a family unit. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, sanitariums, rest homes, and parks and courts for mobile homes do not normally constitute residential real property.

(k) *Amount and character of loans*—(1) *Treatment at time of determination*—(i) *In general.* The amount of a loan, as of the time the determination required by subparagraph (3) of this paragraph is made, shall be treated for the purposes of this section as being secured:

(*a*) First by the portion of property, if any, defined in subparagraph (6), (7), or (8) of paragraph (d) of this section to the extent of the loan value thereof;

(*b*) Next by the portion of property, if any, defined in subparagraph (9) of paragraph (d) of this section to the extent of the loan value thereof; and

(*c*) Next by the portion of property, if any, defined in subparagraph (10) of paragraph (d) of this section to the extent of the loan value thereof.

To the extent that the amount of a loan exceeds the amount treated as being secured by property defined in subparagraphs (6) through (10) of paragraph (d) of this section, such loan shall be treated as property not defined in paragraph (d) of this section. If the loan value of any one category of property defined in paragraph (d) of this section exceeds 85 percent of the amount of the loan for which it is security then the entire loan shall be treated as a loan secured by such property.

(ii) *Loans of $40,000 or less.* Notwithstanding the provisions of subdivision (i) of this subparagraph, in the case of loans amounting to $40,000 or less as of the time of a determination, made on the security of property which is a combination of two or more categories or property defined in subparagraph (6) through (10) of paragraph (d) of this section, all such loans for any taxable year may, at the option of the association, be treated for the purposes of this section as being secured by the category of property the loan value of which constitutes the largest percentage of the total loan value of the property except to the extent that the loan is treated as property not defined in paragraph (d) of this section.

(iii) *Home loans of $20,000 or less.* Notwithstanding the provisions of subdivisions (i) and (ii) of this subparagraph, if a loan amounting to $20,000 or less as of the time of a determination, is secured partly by property of a category described in subparagraph (7) of paragraph (d) of this section (relating to a home loan), the amount of the loan shall, for the purposes of this section, be treated as a loan described in such subparagraph except to the extent that the loan is treated as property not defined in paragraph (d) of this section.

(2) *Treatment subsequent to time of determination.* The amount of a loan outstanding as of any time subsequent to the time of a determination shall be treated, for the purposes of this section, as being secured by each of the categories of property in the same ratio that the amount which was treated as being secured by each category bore to the total amount of the loan at the time as of which the determination was last made with respect to such loan.

(3) *Time of determination*—(i) *In general.* The determination of the amount of a loan which is treated as being secured by each of the categories of property shall be made:

(*a*) As of the time a loan is made;

(*b*) As of the time a loan is increased;

(*c*) As of the time any portion of the property which was security for the loan is released; and

(*d*) As of any time required by applicable Federal or State regulatory authorities for reappraisal or reanalysis of such loans.

(ii) *Special rule.* In the case of loans outstanding with respect to which no event described in subdivision (i) of this subparagraph has occurred in a taxable year beginning on or after October 17, 1962, the determination of the amounts of such loans which are treated as being secured by each of the categories of property may be made, at the option of the association, as of the close of the first taxable year beginning on or after such date, providing the determinations with

respect to all such loans are made as of such date.

(4) *Loan value.* The loan value of property which is security for a loan is the maximum amount at the time as of which the determination is made which the association is permitted to lend on such property under the rules and regulations of applicable Federal and State regulatory authorities. Such loan value shall not exceed the fair market value of such property at such time as determined under such rules and regulations. However, in the case of loans made incidentally with and as a part of a bona fide salvage operation, the loan value of the security property shall be considered to be the face amount of the loan where the loan can be shown by the association to have been made for the primary purpose of recovering the investment of the association, and where such salvage operation is in conformity with rules and regulations of applicable Federal or State regulatory authorities.

(5) *Examples.* The following examples, in each of which it is assumed that X Savings and Loan Association files its return on a calendar year basis, illustrate the application of the rules in this paragraph:

Example (1). On July 1, 1963, X makes a single loan of $1,000,000 to M Corporation which loan is secured by real property which is a combination of homes, apartments, and stores. As of the time the loan is made X determines that the loan values of the categories of property are as follows:

Category of property:	*Loan value*
Home	$400,000
Multifamily	420,000
Nonresidential real property	240,000
Total	1,060,000

As of the time the loan is made, therefore, the $1,000,000 loan is treated under subparagraph (1)(i) of this paragraph as being secured as follows:

Category of loan	Amount of loan	Percentage of total
Home loan	$400,000	40
Multifamily loan	420,000	42
Nonresidential real property loan	180,000	18
Total	1,000,000	100

Assuming that the $1,000,000 loan to M was reduced to $900,000 as of the close of 1963, that there were no increases in the amount of the loan and no releases of property which was security for the loan, and that there was no regulatory requirement to reappraise or reanalyze the loan, such loan will be considered under subparagraph (2) of this paragraph to be secured, as of the close of 1963, as follows:

Category	Percentage as of last determination July 1, 1963	Amount as of Dec. 31, 1963
Home	40	$360,000 (40%×$900,000)
Multifamily	42	378,000 (42%×$900,000)
Nonresidential real property	18	162,000 (18%×$900,000)
Total	100	900,000

Example (2). X makes a loan of $40,000 secured by a building which contains a store on the first floor and four family units on the upper floors. The loan value of the part of the building used as a store is $21,000 and the loan value of the residential portion is $23,000. The loan will be treated under subdivision (i) of subparagraph (1) of this paragraph as a loan secured by residential real property containing four or fewer family units to the extent of $23,000, and by nonresidential property to the extent of $17,000, as of the time the loan is made. However, if X exercises the option to treat all loans of $40,000 or less in accordance with subdivision (ii) of subparagraph (1) of this paragraph, this loan would be treated as a home loan to the extent of the full $40,000 because the loan value of the residential portion is larger than the loan value of the nonresidential part.

(l) *Computation of percentages*—(1) *In general.* The percentages specified in paragraphs (d) through (h) of this section shall, except as provided in subparagraph (3) of this paragraph, be computed by comparing the amount of the assets described in each paragraph as of the close of the taxable year with the total amount of assets as of the close of the taxable year. The amount of the assets in any category and the total amount of assets shall be determined with reference to their adjusted basis under § 1.1011–1, or by such other method as is in accordance with sound accounting principles, provided such method is used in valuing all the assets in a taxable year.

(2) *Treatment of certain assets and reserves.* For purposes of this paragraph:

(i) Reserves for bad debts established pursuant to section 593, or corresponding provisions of prior law, and the regulations thereunder shall not constitute a reduction of total assets, but shall be treated as a surplus or net worth item.

(ii) The adjusted basis of a "loan in process" does not include the unadvanced portion of such loan.

(iii) Advances made by the association for taxes, insurance, etc., on loans shall be treated as being in the same category as the loan with respect to which the advances are made (irrespective of whether the advances are secured by the property securing the loan).

(iv) Interest receivable included in gross income shall be treated as being in the same category as the loan or asset with respect to which it is earned.

(v) The unamortized portion of premiums paid on mortgage loans acquired by the association shall be considered part of the acquisition cost of such loans.

(vi) Prepaid Federal Savings and Loan Insurance Corporation premiums shall be treated as being governmental obligations defined in paragraph (d)(3) of this section.

(vii) Accounts receivable (other than accrued interest receivable), and prepaid expenses and deferred charges other than those referred to in subdivision (v) or (vi) of this subparagraph, shall be disregarded both as separate categories and in the computation of total assets.

(viii) Foreclosed property (as defined in paragraph (j)(1) of this section) shall be treated as having the same character as the loan for which it was given as security.

(3) *Alternative method.* At the option of the taxpayer, the percentages specified in paragraphs (d) through (h) of this section may be computed on the basis of the average assets outstanding during the taxable year. Such average shall be determined by making the computation provided in subparagraph (1) of this paragraph either as of the close of each month, as of the close of each quarter, or semiannually during the taxable year and by using the yearly average of the monthly, quarterly, or semiannual percentages obtained for each category. The method selected must be applied uniformly for the taxable year to all categories of assets, but the method may be changed from year to year.

(4) *Acquisition of certain assets.* For the purpose of the annual computation of percentages under subparagraph (1) of this paragraph—

(i) Assets which, within a 60-day period beginning in one taxable year of the taxpayer and ending in the next year, are acquired directly or indirectly through borrowing and then repaid or disposed of within such period, shall be considered assets other than those defined in paragraph (d) of this section, unless both the acquisition and disposition are established to the satisfaction of the district director to have been for bona fide purposes; and

(ii) The amount of cash shall not include amounts received directly or indirectly from another financial institution (other than a Federal Home Loan Bank or a similar institution organized under State law) to the extent of the amount of cash which an association has on deposit or holds as a withdrawable account in such other financial institution.

(5) *Reporting requirements.* In the case of income tax returns for taxable years ending after October 31, 1964, there shall be filed with the return a statement showing the amount of assets as of the close of the taxable year in each of the categories defined in paragraph (d), and in the category described in paragraph (h) of this section, and a brief description and amount of all other assets. If the alternative method of computing percentages under subparagraph (3) of this paragraph is selected, such statement shall show such information as of the end of each month, each quarter, or semiannually and the manner of calculating the averages. With respect to taxable years beginning after October 16, 1962, and ending before November 1, 1964, taxpayers shall maintain adequate records to establish to the satisfaction of the district director that it meets the various assets tests specified in this section.

(6) *Example.* The principles of this paragraph may be illustrated by the following example in which a description of the assets, the subparagraph of paragraph (d) in which the assets are defined, the amount of the assets, and the percentage of the total assets included in the calculation are set forth.

Z SAVINGS AND LOAN ASSOCIATION ASSETS AS OF DECEMBER 31, 1964

	Item	Described in paragraph (d), sub-paragraph	Amount	Percentage
1.	Cash	(2)	$1,000,000	1
2.	Governmental obligations [1]	(3)	8,000,000	8
3.	Deposit insurance company securities	(4)	1,000,000	1
	Loans outstanding: [2]			
4.	Home	(7)	59,000,000	59
5.	Church	(8)	1,000,000	1
6.	Multifamily	(9)	20,000,000	20
7.	Nonresidential real property	(10)	5,000,000	5
8.	Passbook	(6)	1,000,000	1
9.	Other		2,000,000	2
	Fixed assets (less depreciation reserves):			
10.	Used in the association's business	(5)	1,000,000	1
11.	Rented to others		500,000	.5
12.	Land held for investment		500,000	.5
13.	Total assets included for purposes of this paragraph		100,000,000	100.0%
14.	Accounts receivable		100,000	(disregarded)
15.	Prepaid expenses (other than prepaid FSLIC premiums)		1,000,000	(disregarded)
16.	Deferred charges		1,000,000	(disregarded)
17.	Total assets		102,100,000	

[1] Prepaid FSLIC premiums treated as governmental obligations.
[2] Not including unadvanced portion of loans in process, but including interest receivable and advances with respect to loans.

The computation of the percentages of assets in the various categories for the purpose of determining whether the percentage of assets tests in the paragraphs in this section are met as of the close of the year are as follows:

Test and paragraph	*Items considered*	*Percentage*
90 percent test (d)	$\frac{\text{the sum of items 1 through 8 and 10}}{\text{item 13 (total included assets)}}$	=97 percent
18 percent test (e)	$\frac{\text{the sum of items 7, 9, 11, and 12}}{\text{item 13 (total included assets)}}$	=8 percent
36 percent test (f)	$\frac{\text{the sum of items 6, 7, 9, 11, and 12}}{\text{item 13 (total included assets)}}$	=28 percent
3 percent test (h)	$\frac{0}{\text{item 13 (total included assets)}}$	=0 percent

At the option of the association, the computations listed above could have been made as of the close of each month, each quarter, or semiannually, and averaged for the entire year.

(m) *Taxable years beginning before October 17, 1962.* For taxable years beginning before October 17, 1962, the term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association substantially all the business of which is confined to making loans to members.

§ 301.7701–14 Cooperative bank.

For taxable years beginning after October 16, 1962, the term "cooperative bank" means an institution without capital stock organized and operated for mutual purposes without profit which meets the supervisory test, the business operations test, and the various assets tests specified in paragraphs (d) through (h) of § 301.7701–13, employing the rules and definitions of paragraphs (j) through (l) of that section. In applying paragraphs (b) through (l) of such section any references to an "association" or to a "domestic building and loan association" shall be deemed to be a reference to a cooperative bank.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue.

Approved: October 29, 1964.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 64–11168; Filed, Oct. 30, 1964; 8:50 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 11—Coast Guard, Department of the Treasury

[CGFR 64–62]

PART 11–2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 11–2.2—Solicitation of Bids

PREPARATION OF INVITATIONS FOR BIDS

Pursuant to authority vested in me as Commandant, United States Coast Guard by Treasury Department Order 167–17 (20 F.R. 4976) and Treasury Department Order 167–50 (28 F.R. 530), § 11–2.201(a)(54) is revised to read as follows:

§ 11–2.201 Preparation of invitations for bids.

(a) * * *

(54) *Item identification requirements.* Invitations for bids (IFB) for the procurement of equipment or materials for stock which have not previously been assigned a Federal Stock Number will provide that:

The contractor shall prepare and furnish to the contracting officer, item identifications based on Federal Description Patterns for each item set forth below in accordance with Standard Guides for Preparation of Item Identifications by Government Supplier (Federal Standard No. 5a) _____ (list each item of the IFB requiring identification).

Upon receipt of identification data, the contracting officer will forward same to the Commandant (FS–4) for obtaining a Federal Stock Number.

* * * * *

(14 U.S.C. 633, 10 U.S.C. Ch. 137)

Dated: October 21, 1964.

[SEAL] W. D. SHIELDS,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[F.R. Doc. 64–11123; Filed, Oct. 30, 1964; 8:49 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[No. 34398]

PART 131—UNITED STATES SAFETY APPLIANCE STANDARDS (RAILROAD)

New Classification for Hy-Cube Cars

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., this 26th day of October A.D. 1964.

It appearing, that no exceptions having been filed to an examiner's recommended report and order promulgating a new classification and standards for a new type railroad car commonly known as a "Hy-Cube" car the report and order became a report and order of the Commission by operation of law upon expiration of the exception period effective October 22, 1964:

It further appearing, that while it is clear that the prescribed standards are effective on and after October 22, 1964, a question has been raised regarding the retroactive applicability of such standards to such cars under construction prior to October 22, 1964, and placed in service thereafter some of which are equipped with running boards or otherwise do not comply in all details with the standards prescribed by the order of October 22, 1964;

And it further appearing, that a need has been shown for a clarification of the applicability of the standards prescribed by the order effective October 22, 1964,

and to remove all uncertainty as to the retroactive effect of said order:

It is ordered; That the order of October 22, 1964, be, and it is hereby interpreted to prescribe standards for future "Hy-Cube" cars and is not intended to apply to such cars already in service prior to October 22, 1964, nor to such cars under construction prior thereto but placed in service before November 23, 1964:

And it is further ordered, That "Hy-Cube" cars under construction before the effective date of said order may be placed in service after October 22, 1964 without compliance with the standards prescribed by the said order of October 22, 1964, provided they are placed in service on or before November 23, 1964, and are in compliance with all other applicable standards prescribed by the Commission.

Notice of this order is being given to the general public by depositing a copy thereof in the office of the Secretary of the Interstate Commerce Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

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

[F.R. Doc. 64-11116; Filed, Oct. 30, 1964; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Crab Orchard National Wildlife Refuge, Illinois

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

The public hunting of deer on the Crab Orchard National Wildlife Refuge on an area designated by signs as open to hunting is permitted with bow and arrow from one-half hour before sunrise to one-half hour before sunset daily from October 1, 1964 through November 15, 1964, and from one-half hour before sunrise until one-half hour before sunset November 24, 1964 through December 31, 1964, except that deer may not be taken with bow and arrow from November 30, 1964 through December 6, 1964. Shot gun hunting of deer is permitted from 6:00 a.m. to 4:00 p.m., c.s.t., on November 20, November 21, and November 22, 1964, and December 4, December 5, and December 6, 1964. The open area comprising 9,380 acres is delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn., 55408. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of deer.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1964.

URBAN C. NELSON, *Acting Regional Director, Bureau of Sport Fisheries and Wildlife.*

OCTOBER 26, 1964.

[F.R. Doc. 64-11108; Filed, Oct. 30, 1964; 8:46 a.m.]

PART 32—HUNTING

Shiawassee National Wildlife Refuge, Michigan

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

MICHIGAN

SHIAWASSEE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Shiawassee National Wildlife Refuge is permitted from 6:00 a.m. to 7:00 p.m. each day from November 15, 1964, through November 30, 1964, only on the area designated by signs as open to hunting. This open area, comprising 3,000 acres, is delineated on a map available at the refuge headquarters, Saginaw, Michigan and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn., 55408. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer. The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32 and are effective through November 30, 1964.

URBAN C. NELSON, *Acting Regional Director, Bureau of Sport Fisheries and Wildlife.*

OCTOBER 26, 1964.

[F.R. Doc. 64-11109; Filed, Oct. 30, 1964; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 984]

WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

Notice of Proposed Rule Making

Notice is hereby given of a proposal to amend § 984.437 (29 F.R. 175) of Subpart—Administrative Rules and Regulations currently in effect under amended Marketing Agreement No. 105 and Order No. 984 (7 CFR Part 984), regulating the handling of walnuts grown in California, Oregon, and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on the recommendation of the Walnut Control Board and other available information.

Consideration will be given to any written data, views, and arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C., 20250, not later than fifteen days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice should be in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is to prescribe in § 984.437 the following method for proposing names of additional candidates to be included on the Oregon-Washington grower's nomination ballot.

Any ten or more growers, whose orchards are located in Oregon or Washington, and who marketed an aggregate of 50 or more tons of walnuts in the preceding marketing year, may petition the Board not later than March 15 of any nomination year (on a form provided by the Board) to include on the ballot the names of a proposed candidate eligible to serve as a member and one as alternate member on the Board to represent the group specified in § 984.35(a)(8). The names proposed by such growers shall be included on the ballot.

Dated: October 28, 1964.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 64–11135; Filed, Oct. 30, 1964; 8:50 a.m.]

[9 CFR Part 201]

REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

Bonding

Notice is hereby given that, pursuant to the authority contained in an act of Congress approved July 12, 1943 (7 U.S.C 204), and in section 407(a) of the Packers and Stockyards Act (7 U.S.C. 228 (a)), the Agricultural Marketing Service proposes to amend §§ 201.27 through 201.34 (9 CFR 201.27–201.34) of the regulations under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), concerning general bonding provisions and market agency and dealer bonds.

Statement of considerations. On September 28, 1961, there was published in the FEDERAL REGISTER (26 F.R. 9136) a notice of consideration of amendments to the registration and bonding regulations under the Packers and Stockyards Act. Interested persons were invited to submit proposals or comments with respect to such regulations. It was stated in the publication that if it was proposed after consideration of all submissions and comments, and consideration of all other relevant matters, that the regulations should be amended, a notice of proposed rule making would be published in the FEDERAL REGISTER setting forth any specific proposed amendments.

Numerous written recommendations have been received and it is now proposed that various amendments be made to the bonding regulations. The proposed regulations have been discussed with livestock industry groups throughout the country and represent the views and recommendations of most such groups and other interested persons with whom the regulations have been discussed.

Under the proposed bonding regulations, the amount of a registrant's bond not exceeding $25,000 would be determined on the basis of the multiple of $2,000 above the average amount of such registrant's business, instead of $1,000; and for bonds in excess of $25,000, the multiple of $5,000 would be used instead of $1,000. The proposed regulations would also increase to $10,000 the minimum bond for market agencies selling livestock on a commission basis or providing clearing services; provide for increasing bonds of seasonal operators; provide for exemption from bonding of dealers whose business does not exceed $100,000 per annum; clarify condition clauses in market agency and dealer bonds; provide for bonds without trustees if a principal so desires; and simplify and clarify the bonding requirements and procedures under the Packers and Stockyards Act. These amendments are proposed in an effort to modernize and strengthen the bonding provisions of the regulations in the light of the changing marketing conditions in the livestock industry. At the same time, they would reduce unnecessary expense and simplify the procedures for maintaining bonds, on behalf of both the marketing industry and the Government.

It is proposed that §§ 201.27 through 201.34 of the regulations under the Packers and Stockyards Act be amended to read as follows:

GENERAL BONDING PROVISIONS

§ 201.27 Underwriter; equivalent in lieu of bonds.

(a) The surety on bonds maintained under the regulations in this part shall be a surety company (1) which is currently approved by the U.S. Treasury Department for bonds executed to the United States, and (2) which has not failed or refused to satisfy its legal obligations under bonds issued under said regulations.

(b) A bond equivalent may be filed or maintained in lieu of a bond. A bond equivalent shall be in the form of a trust fund agreement based upon cash or fully negotiable bonds of the U.S. Government. The provisions of §§ 201.28 through 201.38 shall be applicable to such trust fund agreements.

§ 201.28 Duplicates of bonds or equivalents to be filed with Area Supervisor.

Fully executed duplicates of bonds or trust fund agreements maintained under the regulations in this part, and duplicates of all endorsements, amendments, riders, indemnity agreements and other attachments thereto, shall be filed with the Area Supervisor for the area in which the registrant or licensee, or person applying for registration or a license resides, or in the case of a corporation, where the corporation has its home office: *Provided*, That if such registrant or licensee or person does not engage in business in such area, the foregoing documents shall be filed with the Area Supervisor for the area in which the registrant's or licensee's or person's principal place of business is located.

MARKET AGENCY AND DEALER BONDS

§ 201.29 Market agencies and dealers required to file and maintain bonds.

(a) Every market agency and dealer, except packer buyers registered as dealers to purchase livestock for slaughter only and dealers granted an exemption under paragraph (c) of this section, shall execute and maintain, or cause to be executed and maintained, a reasonable bond to secure the performance of obligations incurred as such market agency or dealer, and no market agency or dealer shall conduct his operations unless there is on file and in effect a bond complying with the regulations in this part.

(b) Any person registered, or applying for registration, as both a market agency selling on a commission basis and as a dealer, shall file and maintain separate bonds to cover his market agency and dealer operations. The amount of each such bond shall be computed on the basis of the volume of business handled in each separate capacity.

(c) Any dealer whose volume of purchases of livestock is less than $100,000

per year may apply to the Director for an exemption from the requirements of this section. Such an exemption shall not be granted if such dealer has issued insufficient funds checks in payment for livestock, has failed to pay promptly for livestock, or has a high volume of operations during seasonal periods. Any such exemption authorized by the Director may be terminated or revoked by him, upon notice in writing to such dealer, upon the grounds that such dealer has issued insufficient funds checks in payment for livestock, has failed to pay promptly for livestock, has increased his volume of operations to over $100,000 per year, or has a high volume of operations during seasonal periods.

(d) Each market agency and dealer whose buying operations are cleared by another market agency shall be named as clearee in the bond filed and maintained by the market agency registered to provide clearing services. Each market agency selling livestock on an agency basis shall file and maintain its own bond: *Provided:* That any market agency selling livestock which was named prior to September 1, 1957, as clearee in the bond filed and maintained by a market agency registered to provide clearing services may continue to be named as a clearee in the bond filed by such market agency.

§ 201.30 Amount of market agency and dealer bonds.

(a) Except as hereinafter otherwise provided, the amount of each market agency and dealer bond shall be not less than the nearest multiple of two thousand dollars ($2,000) above the average amount of sales and purchases of livestock by a market agency, or purchases of livestock by a dealer, during a period equivalent to two business days based on the total number of the business days, and the total amount of such transactions in the preceding 12 months, or in such substantial part thereof in which such market agency or dealer did business, if any: *Provided*, That bonds above $25,000 shall be not less than the nearest multiple of $5,000 above the average amount of sales or purchases of livestock, or both, by a market agency or dealer computed as set out in this section. For the purpose of this computation, 260 shall be deemed the number of business days in any year. When the principal part of the livestock handled by a market agency selling livestock on a commission basis is sold at public auction, the amount of the bond shall be not less than the nearest multiple of two thousand dollars ($2,000) for those bonds of $25,000 or less and the nearest multiple of $5,000 for those bonds in excess of $25,000, above an amount determined by dividing the total value of the livestock sold by the market agency during the preceding 12 months, or such substantial part thereof as the market agency was engaged in business, by the actual number of auction sales at which livestock was sold by the market agency, but in no instance shall the divisor be greater than 130. When the amount of the bond for any market agency or dealer, calculated as hereinbefore specified, exceeds $50,000, the amount of the bond need not exceed fifty thousand dollars ($50,000) plus 10 percent of the excess, unless the Director has reason to believe a bond in such amount to be inadequate pursuant to paragraph (f) of this section.

(b) In no case shall a bond covering the buying operations of a market agency or dealer be less than five thousand dollars ($5,000), or such higher amount as may be required to comply with the laws of any State.

(c) In no case shall a bond covering the selling operations of a market agency be less than ten thousand dollars ($10,000), or such higher amount as may be required to comply with the laws of any State.

(d) In no case shall the amount of bond filed by a market agency acting in the capacity of a clearing agency be less than ten thousand dollars ($10,000), or the sum of the bonds computed in accordance with this section, whichever is greater: *Provided*, That in computing the amount of such bonds the provisions of paragraph (a) of this section relating to the maximum amount of bonds shall apply to the aggregate bond so determined rather than to the individual bonds of the clearees.

(e) If a person applying for registration as a market agency or dealer has been engaged in the business of handling livestock in such capacity prior to the date of the application, the value of the livestock so handled, if representative of his future operations, shall be used in computing the amount of bond. If the applicant for registration is a successor in business to a registrant formerly subject to these regulations, the bond of such applicant shall be in an amount not less than that required of the prior registrant, unless otherwise determined by the Director.

(f) Whenever the Director has reason to believe that any bond filed or maintained under the regulations in this Part is inadequate to secure the performance of the obligations of the market agency or dealer covered by such bond, he shall notify the market agency or dealer to adjust such bond to meet the requirements of this section or, if such bond is inadequate because of the volume of business conducted on a seasonal or otherwise irregular basis, to meet such requirements as may be determined by the Director to be reasonable based upon such seasonal or irregular operation.

§ 201.31 Conditions in market agency and dealer bonds.

Each market agency and dealer bond shall contain conditions applicable to the activity or activities in which the person or persons named as principal or clearees in the bond propose to engage, which conditions shall be as follows or in terms to provide equivalent protection:

(a) *When the principal sells livestock for the account of others.* If the said principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the account of others by said principal.

(b) *When the said principal buys livestock for the account of others.* If the said principal shall safely keep and properly disburse all funds coming into his hands for the purpose of paying for livestock purchased for the account of others, and if said principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said principal for the account of others.

(c) *If the principal buys livestock for his own account.* If the said principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said principal.

(d) *When the principal clears other registrants buying livestock and thus is responsible for the obligations of such other registrants.* If the said principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, viz.: (insert here the names of such other registrants as they appear in the application for registration), or if such other registrants, shall (1) pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such other registrants; and (2) safely keep and properly disburse all funds coming into the hands of such principal or such other registrants for the purpose of paying for livestock purchased for the account of others.

(e) *When the principal clears other registrants selling livestock and thus is responsible for the obligations of such other registrants.* The condition clauses of those selling agencies named prior to September 1, 1957, as clearees in the bonds filed and maintained by market agencies registered to provide clearing services shall remain the same as the condition clauses now in effect in such bonds.

§ 201.32 Trustee in market agency and dealer bonds.

Bonds may be in favor of a trustee who shall be a financially responsible, disinterested person satisfactory to the Director. State officials, secretaries or other officers of livestock exchanges or of similar trade associations, attorneys at law, banks and trust companies, or their officers, are deemed suitable trustees. If a trustee is not designated in the bond and action is taken to recover damages for breach of any condition thereof, the Director shall designate a person to act as trustee. In those States in which a State official is required by statute to act or has agreed to act as trustee, such official shall be designated by the Director as trustee when a designation by the Director becomes necessary.

§ 201.33 Persons damaged may maintain suit to recover on market agency and dealer bonds; Director to be notified of claims; disclosure of information.

(a) Each bond shall contain provisions that (1) any person damaged by failure of the principal to comply with the condition clauses of the bond may maintain suit to recover on the bond even though such person is not a party named in the bond, (2) the surety shall notify the Director of any claim filed with it under such bond at the time of receipt

of such claim, and (3) the Director is authorized to designate a trustee pursuant to § 201.32.

(b) Representatives of the Packers and Stockyards Division are authorized to disclose to principals on bonds, clearees, trustees, claimants, and bonding companies, such information as may be necessary to facilitate the settlement of claims made upon a bond filed pursuant to the regulations in this part.

§ 201.34 Termination of market agency and dealer bonds.

Each bond shall contain a provision requiring that, prior to terminating such bond, at least thirty (30) days' notice in writing shall be given to the Director, Packers and Stockyards Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., 20250, by the party terminating the bond.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., on or before November 25, 1964.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 28th day of October 1964.

CLARENCE H. GIRARD,
Deputy Administrator.

[F.R. Doc. 64-11134; Filed, Oct. 30, 1964; 8:50 a.m.]

Agricultural Stabilization and Conservation Service

[7 CFR Part 814]

MAINLAND CANE SUGAR AREA

Proposed Allotment of 1965 Sugar Quota

Pursuant to the authority contained in the Sugar Act of 1948, as amended (61 Stat. 922, as amended) hereinafter called the "Act", and in accordance with the applicable rules of practice and procedure (7 CFR 801.1 et seq.) and on the basis of information before me, I do hereby find that the allotment of the 1965 sugar quota for the Mainland Cane Sugar Area is necessary to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market sugar, and hereby give notice that a public hearing will be held at Miami Beach, Fla. in the DiLido Hotel on November 12, 1964, beginning at 10:00 a.m., e.s.t.

The preliminary findings made above are based on the best information now available. It will be appropriate to present evidence at the hearing on the basis of which the Secretary of Agriculture may affirm, modify, or revoke such preliminary findings.

The purpose of the hearing is to receive evidence to enable the Secretary of Agriculture to establish fair, efficient, and equitable allotments of a portion of the above mentioned quota which will enable persons who process sugar from sugarcane grown in the Mainland Cane Sugar Area to market such sugar in an orderly manner during the period January 1, 1965, to the date the Secretary prescribes a method for allotting the entire 1965 quota on the basis of the record of another hearing to be held subsequently.

To avoid disorderly marketing by any allottee who might market early in 1965 a quantity of sugar larger than its allotment of the entire 1965 sugar quota, it is necessary to make allotments effective on January 1, 1965. Part of the evidence necessary to provide an adequate basis for establishing allotments of the entire 1965 quota for the Mainland Cane Sugar Area for the full calendar year cannot be adduced on the date for which the hearing is called. Therefore, the testimony on that date will be limited to data, views and arguments regarding the identity of the allottees and consideration of the factors cited in section 205(a) of the act pertinent to establishing allotments of a portion of the quota to be in effect from January 1, 1965, until an order establishing the method for allotting the entire quota for the area for the calendar year 1965 is made effective.

Upon notice hereafter to be given in accordance with applicable rules of practice and procedure, a public hearing will be held early in 1965 for the purpose of receiving evidence to enable the Secretary to establish allotments of the entire 1965 quota applicable to the area for the calendar year 1965 under the provisions of the Act.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Issued this 29th day of October 1964.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 64-11165; Filed, Oct. 29, 1964; 2:27 p.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

[Release 34-7447, 33-4728]

REGISTRATION OF SECURITIES, PROXY RULES

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposed amendment of its Rule 14a-3 (17 CFR 240.14a-3) and Form 8-A (listed and described in 17 CFR 249.208a) under the Securities Exchange Act of 1934. Form 8-A is an optional short form which may be used by an issuer for registering an additional class of securities on a national securities exchange on which it has one or more other classes of securities registered. The amended form would still be used for such registration, but it could also be used for registration pursuant to the new section 12(g) of the Act of a class of securities of an issuer which has one or more other classes of securities registered pursuant to section 12 (b) or (g) of the Act and for registration pursuant to section 12(g) by registrants which have recently filed a registration statement under the Securities Act of 1933 or which file reports pursuant to section 15(d) of the Securities Exchange Act of 1934.

The amended form would call only for a description of the securities to be registered, specimens or copies of such securities and copies of the constituent instruments defining the rights of the holders of such securities. The use of such an abbreviated form is made possible because of the information and documents which registrants who use the form have already filed with the Commission and the annual and other reports which they will continue to file subsequent to registration. It should be noted, in this connection, that issuers using this form are required to file an annual report pursuant to section 13 of the Act for the prior fiscal year, except in the case of an issuer registering securities pursuant to section 12 for the first time, where such fiscal year is covered by an effective registration statement under the Securities Act of 1933.

Form 8-A as now in effect calls for certain information with respect to the issuance of securities of the class to be registered and the transaction in which such securities were issued. Financial statements with respect to businesses acquired are also required in certain cases. These requirements would be deleted from the form inasmuch as the information will be furnished by the issuer in current reports on Form 8-K (listed and described in 17 CFR 249.308) or in the issuer's annual report to the Commission.

Any issuer which desires to register pursuant to section 12(g) of the Act prior to the adoption of the amended Form 8-A may, if it meets the terms and conditions of the rule as to the use of the form, use the proposed amended form for such registration. A copy of the form as proposed to be amended is set forth below.

It is also proposed to amend Rule 14a-3(b) (17 CFR 240.14a-3(b)) of the Commission's proxy rules for the purpose of requiring unlisted companies to include a description of their business in their annual reports to security holders, such as is customarily furnished by listed companies. The text of the proposed amendment is set forth below. The Commission is now considering rules to implement the new section 14(c) of the Act requiring issuers which do not solicit proxies to furnish to their security holders information equivalent to that which would be furnished in a proxy statement.

§ 240.14a-3 Information to be furnished security holders.

* * * * *

(b) If the solicitation is made on behalf of the management of the issuer, and relates to an annual meeting of security holders at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) shall

be accompanied or preceded by an annual report to such security holders as follows:

(1) The report shall contain such financial statements for the last fiscal year as will in the opinion of the management adequately reflect the financial position and results of operations of the issuer. Consolidated financial statements of the issuer and its subsidiaries shall be included in the report if they are necessary to reflect adequately the financial position and results of operations of the issuer and its subsidiaries, but in such case the individual statements of the issuer may be omitted, even though they are required to be included in reports to the Commission. Any differences, reflected in the financial statements in the report to security holders, from the principles of consolidation or other accounting principles or practices, or methods of applying accounting principles or practices, applicable to the financial statements of the issuer filed or proposed to be filed with the Commission, which have a material effect on the financial position or results of operations of the issuer, shall be noted and the effect thereof reconciled or explained in such report. Financial statements included in the report may, however, omit such details or employ such condensation as may be deemed suitable by the management, provided that such statements, considered as a whole in the light of other information contained in the report shall not by such procedure omit any material information necessary to a fair presentation or to make the financial statements not misleading under the circumstances. The financial statements included shall be certified by independent public or certified public accountants, unless (i) the corresponding statements included in the issuer's annual report filed or to be filed with the Commission for the same fiscal year are not required to be certified, or (ii) the Commission finds in a particular case that certification would be impracticable or would involve undue effort or expense. Subject to the foregoing requirements with respect to financial statements, the annual report to security holders may be in any form deemed suitable by the management, and

(2) If the solicitation relates to a class of securities not listed and registered on a national securities exchange, the report shall also contain such a description of the business of the issuer and its subsidiaries as will, in the opinion of the management, adequately reflect the operations and general nature and scope of the business of the issuer.

NOTE: As a guide to the kind of disclosure which may be appropriate, the registrant's attention is directed to Items 3 and 4 of Form 10 and the instructions thereto.

This paragraph shall not apply, however, to solicitations made on behalf of the management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's proxy statement includes an undertaking in bold-face type to furnish such annual report to all persons being solicited, at least twenty days before the date of the meeting.

* * * * *

§ 249.208a Form 8–A, for registration of certain class of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

GENERAL INSTRUCTIONS

A. *Rule as to use of Form 8–A.* This form may be used for registration of the following securities pursuant to the Securities Exchange Act of 1934:

(a) For registration on a national securities exchange pursuant to section 12(b) of the Act of a class of securities of an issuer which has one or more other classes of securities so registered on the same securities exchange;

(b) For registration pursuant to section 12(g) of the Act of a class of securities of an issuer which has one or more other classes of securities registered pursuant to either section 12 (b) or (g) of the Act.

(c) For registration pursuant to section 12(g) of the Act of a class of securities of any issuer which has filed under the Securities Act of 1933 a registration statement which has become effective and is not subject to any proceeding under section 8 of that Act or to an order issued pursuant thereto; *Provided:*

(1) The registration statement on this form will become effective within one year after the end of the last fiscal year for which certified financial statements were included in the registration statement under the Securities Act of 1933, or in a post-effective amendment thereto which has become effective; or

(2) the registrant is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 and has filed an annual report pursuant to such section for the last fiscal year ending prior to the effective date of the registration statement on this form; or

(3) the registrant would be required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 but for the first sentence of section 12(f)(6) of that Act and has filed an annual report pursuant to section 13 of that Act for the last fiscal year ending prior to the effective date of the registration statement on this form.

B. *Application of general rules and regulations.* (a) The general rules and regulations under the Act contain certain general requirements which are applicable to registration on any form. These general requirements should be carefully read and observed in the preparation and filing of applications and statements on this form.

(b) Particular attention is directed to Regulation 12B (17 CFR 240.12b–1 to 240.12b–36) which contains general requirements regarding matters such as the kind and size of paper to be used, legibility, information to be given whenever the title of securities is required to be stated, incorporation by reference and the filing of the application or statement. The definitions contained in Rule 12b–2 (17 CFR 240.12b–2 should be especially noted).

C. *Preparation of application or statement.* This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the application or statement on paper meeting the requirements of Rule 12b–12 (17 CFR 240.12 b–12). The application or statement shall contain the item numbers and captions, but the text of the items may be omitted provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b–13).

D. *Signature and filing of application or statement.* Three complete copies of the application or statement, including exhibits and all papers and documents filed as a part thereof, shall be filed with the Commission. At least one complete copy of each application for registration of securities on a national securities exchange shall be filed with each exchange on which registration is applied for. At least one of the copies filed with the Commission and one filed with each such exchange shall be manually signed. Unsigned copies shall be conformed.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 8–A

FOR REGISTRATION OF CERTAIN CLASS OF SECURITIES PURSUANT TO SECTION 12 (B) OR (G) OF THE SECURITIES EXCHANGE ACT OF 1934

(Exact name of registrant as specified in charter, and State of incorporation)

(Address of registrant's principal executive offices)

Securities to be registered pursuant to section 12(b) of the Act; if none, so state:

Title of each class to be so registered:	*Name of each exchange on which each class is to be registered*
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Securities to be registered pursuant to section 12(g) of the Act; if none, so state:

(Title of class)

(Title of class)

INFORMATION REQUIRED IN APPLICATION OR STATEMENT

Item 1. Capital Stock to be Registered. If capital stock is to be registerd hereunder, state the title of the class and furnish the following information (See Instruction 1):

(a) Outline briefly (1) dividend rights; (2) voting rights; (3) liquidation rights; (4) pre-emptive rights; (5) conversion rights; (6) redemption provisions; (7) sinking fund provisions, and (8) liability to further calls or to assessment by the registrant.

(b) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restriction on the repurchase or redemption of shares by the registrant while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

Instructions. 1. If a description of the securities comparable to that required here is contained in any other filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

2. This item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

3. If the rights evidenced by the securities to be registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by securities being registered.

Item 2. Debt Securities to be Registered. If the equity securities to be registered hereunder are bonds, debentures or other evi-

dences of indebtedness, outline briefly such of the following as are relevant:

(a) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(b) Provisions with respect to the kind and priority of any lien, securing the issue, together with a brief identification of the principal properties subject to such lien.

(c) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(d) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described.

(e) The name of the trustee and the nature of any material relationship with the registrant or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

(f) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

Instruction. The instructions to Item 1 shall also apply to this item.

Item 3. Other Securities to be Registered. If securities other than those referred to in Items 1 and 2 are to be registered hereunder, outline briefly the rights evidenced thereby. If subscription warrants or rights are to be registered, state the title and amount of securities called for, the period during which and the price at which the warrants or rights are exercisable.

Instruction. The instructions to Item 1 shall also apply to this item.

Item 4. Exhibits. List below all exhibits filed as a part of the application or statement:

SIGNATURE

Pursuant to the requirements of section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this application for registration (or registration statement) to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)

By ---
(Signature) *

Date ---

*Print the name and title of the signing officer under his signature.

INSTRUCTIONS AS TO EXHIBITS

Subject to Rule 12b–32 (17 CFR 240.12b–32) regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the application or statement. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 4.

1. Specimens or copies of each security to be registered hereunder.

2. Copies of all constituent instruments defining the rights of the holders of each class of such securities, including any contracts or other documents which limit or qualify the rights of such holders.

(Secs. 12, 14, 23; 48 Stat. 892, 895 and 901, as amended; 15 U.S.C. 781, 78n, 78w)

All interested persons are invited to submit their views and comments on the proposed amendments to the rule and form, in writing, to the Securities and Exchange Commission, Washington, D.C., 20549, on or before, November 23, 1964. Except where it is requested that such communications not be disclosed, they will be considered available for public inspection.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

OCTOBER 21, 1964.

[F.R. Doc. 64–11100; Filed, Oct. 30, 1964; 8:45 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

[Delegation of Authority 53]

PRINCIPAL U.S. DIPLOMATIC OFFICER IN MALAWI AND ZAMBIA

Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 104 from the Secretary of State of November 3, 1961 (26 F.R. 10608), I hereby delegate to the principal diplomatic officer of the United States in Malawi and Zambia, with respect to the administration of the foreign assistance program within the country to which he is accredited, the authorities delegated to Directors of Missions of the Agency for International Development (A.I.D.) in the following delegations, subject to the limitations applicable to the exercise of such authorities by A.I.D. Mission Directors:

(1) Unpublished Delegation of Authority of January 10, 1955;

(2) Delegation of Authority of November 26, 1954, as amended (19 F.R. 8049);

(3) Paragraphs 4 and 5 of Delegation of Authority of September 28, 1960 (25 F.R. 9927).

In addition to the foregoing, there is hereby delegated to the aforesaid diplomatic officers the authorities delegated to A.I.D. Mission Directors in existing A.I.D. manual orders, regulations (published or otherwise), policy directives, policy determinations, memoranda and other instructions.

This delegation of authority is effective October 24, 1964.

WILLIAM S. GAUD,
Acting Administrator.

OCTOBER 20, 1964.

[F.R. Doc. 64-11102; Filed, Oct. 30, 1964; 8:45 a.m.]

[Delegation of Authority No. 54]

ASSISTANT ADMINISTRATOR FOR TECHNICAL COOPERATION AND RESEARCH

Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 104 of November 3, 1961, as amended, from the Secretary of State, I hereby delegate to the Assistant Administrator for Technical Cooperation and Research the authority to:

1. Furnish assistance pursuant to sections 214 (a) and (b) of the Foreign Assistance Act of 1961, as amended, to schools, libraries, and hospitals which qualify under those sections of the law and to make grants to such institutions in connection therewith.

2. To specify terms and conditions for such assistance.

3. To administer and implement such assistance and to exercise all authorities with respect thereto that are vested and that become vested in the regional Assistant Administrators with respect to programs and projects for which they have operational responsibility, including, among other acts, approval of contracts.

The authorities delegated herein may be redelegated to the Deputy Assistant Administrator for Technical Cooperation and Research and, with approval of the cognizant regional Assistant Administrators to A.I.D. Mission Directors. The authorities provided in paragraph 3 may also be redelegated to the Director of the Education and Human Resources Development Service to the extent that the regional Assistant Administrators may be authorized to redelegate such authorities to persons other than their deputies or principal assistants.

The authorities delegated herein shall be exercised in accordance with agency policies, regulations and procedures.

This Delegation of Authority shall be effective immediately.

DAVID E. BELL,
Administrator.

OCTOBER 21, 1964.

[F.R. Doc. 64-11103; Filed, Oct. 30, 1964; 8:45 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 56293]

[Customs Delegation Order 1, Rev.; Amdt.]

DEPUTY COMMISSIONER, DIVISION OF COLLECTORS OPERATIONS

Delegation of Authority To Make Certain Decisions and Perform Certain Functions

OCTOBER 28, 1964.

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654; 19 F.R. 7241), as amended, Customs Delegation Order No. 1 (T.D. 53161; 17 F.R. 11705), as revised by T.D. 53694 (19 F.R. 8756), and amended by T.D. 53914 (20 F.R. 7554), T.D. 54654 (23 F.R. 5962), T.D. 55431 (26 F.R. 6628), T.D. 55543 (27 F.R. 262), T.D. 55823 (28 F.R. 1267), T.D. 55946 (28 F.R. 7611), and T.D. 56262 (29 F.R. 13350), is hereby further amended as follows:

Subdivision (b)(7) of paragraph 1 is amended by deleting "(a)" and substituting in lieu thereof "(b)."

Paragraph 1 is amended by adding the following new subdivision (e) to read as follows:

(e) Deputy Commissioner, Division of Collectors Operations:

(1) Decisions regarding import quotas.

(2) Decisions on requests for permission for scheduled aircraft to land elsewhere than at an international airport of entry.

(3) Decisions regarding changes in hours of service at ports of entry.

This order shall become effective on November 1, 1964.

[SEAL] LESTER D. JOHNSON,
Acting Commissioner of Customs.

[F.R. Doc. 64-11119; Filed, Oct. 30, 1964; 8:48 a.m.]

Internal Revenue Service

[Order 96]

ASSISTANT COMMISSIONER (COMPLIANCE) AND ASSISTANT COMMISSIONER (TECHNICAL)

Delegation Order Regarding Application of Rulings Without Retroactive Effect

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7805-1(b):

1. The Assistant Commissioner (Compliance) is hereby authorized to prescribe the extent, if any, to which any ruling issued by or pursuant to authorization from him, relating to the internal revenue laws concerning alcohol, tobacco and firearms taxes other than the manufacturers excise tax on firearms arising from application of sections 4181 and 4182 of the Internal Revenue Code, shall be applied without retroactive effect.

2. The Assistant Commissioner (Technical) is hereby authorized to prescribe the extent, if any, to which any ruling issued by or pursuant to authorization from him, relating to the internal revenue laws concerning taxes other than those covered by delegation to the Assistant Commissioner (Compliance) in paragraph 1, shall be applied without retroactive effect.

3. This authority may not be redelegated.

Issued: October 27, 1964.

Effective date: October 27, 1964.

[SEAL] BERTRAND M. HARDING,
Acting Commissioner.

[F.R. Doc. 64-11120; Filed, Oct. 30, 1964; 8:48 a.m.]

[Order 97]

ASSISTANT COMMISSIONER (COMPLIANCE) AND ASSISTANT COMMISSIONER (TECHNICAL)

Delegation Order Regarding Closing Agreements Concerning Internal Revenue Tax Liability

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121-1(a):

1. The Assistant Commissioner (Compliance) is hereby authorized to enter into a written agreement with any person relating to the internal revenue tax liability for alcohol, tobacco and firearms taxes, other than the manufacturers excise tax on firearms arising from application of sections 4181 and 4182 of the Internal Revenue Code, of such person (or of the person or estate for whom he acts) in respect of any prospective transactions or completed transactions affecting returns to be filed.

2. The Assistant Commissioner (Technical) is hereby authorized to enter into a written agreement with any person relating to the internal revenue tax liability, other than for those taxes covered by delegation to the Assistant Commissioner (Compliance) in paragraph 1, of such person (or of the person or estate for whom he acts) in respect of any prospective transactions or completed transactions affecting returns to be filed.

3. The Assistant Commissioner (Compliance) is hereby authorized to enter into a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he acts) for a taxable period or periods ended prior to the date of agreement and related specific issues affecting other taxable periods.

4. This authority may not be redelegated.

Issued: October 27, 1964.

Effective date: October 27, 1964.

[SEAL] BERTRAND M. HARDING,
Acting Commissioner.

[F.R. Doc. 64–11121; Filed, Oct. 30, 1964; 8:48 a.m.]

Office of the Secretary

[Treasury Department Order 150–63]

ALBANY AND BUFFALO

Realignment of Boundaries of Internal Revenue Districts

By virtue of the authority vested in me as Secretary of the Treasury by Reorganization Plan No. 26 of 1950, Reorganization Plan No. 1 of 1952, section 7621 of the Internal Revenue Code of 1954, as amended, and Executive Order 10289, approved September 17, 1951, made applicable to the Internal Revenue Code of 1954 by Executive Order 10574, approved November 5, 1954: *It is hereby ordered:*

1. *Albany District.* The Internal Revenue District, Albany, shall include the counties of Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Sullivan, Ulster, Warren, and Washington, within the State of New York.

2. *Buffalo District.* The Internal Revenue District, Buffalo, shall include the counties of Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Delaware, Erie, Genessee, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates, within the State of New York.

3. *Effective date and implementation.* The provisions of sections 1 and 2 of this order shall be effective January 1, 1965. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment, and funds as may be necessary to implement the provisions of this order.

4. Treasury Department Order No. 150–58, dated May 17, 1963, is amended with respect to the boundaries of the Albany and Buffalo Internal Revenue Districts.

Dated: October 23, 1964.

[SEAL] DOUGLAS DILLON,
Secretary of the Treasury.

[F.R. Doc. 64–11122; Filed, Oct. 30, 1964; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Public Announcement 29, Amdt. 4]

COLUMBIA BASIN PROJECT, WASHINGTON

Public Announcement of Sale of Full-Time Farm Units

Public announcement of the sale of farm units in the Quincy-Columbia Basin Irrigation District, Columbia Basin Project, Washington, dated September 15, 1958, published in the FEDERAL REGISTER at 23 F.R. 7550, and subsequently amended, is further amended for Farm Unit 176, Irrigation Block 89, by deleting in its entirety section 16.d. *Residence Requirements.*

The purpose of this amendment is to enable the purchaser, who already has a permanent dwelling on nearby land, to obtain the necessary long-term credit to refinance his sprinkler system.

FLOYD E. DOMINY,
Commissioner of Reclamation.

OCTOBER 27, 1964.

[F.R. Doc. 64–11105; Filed, Oct. 30, 1964; 8:45 a.m.]

[Public Announcement 30, Amdt. 4]

COLUMBIA BASIN PROJECT, WASHINGTON

Public Announcement of Sale of Full-Time Farm Units

Public announcement of the sale of farm units in the South Columbia Basin Irrigation District, Columbia Basin Project, Washington, dated May 19, 1959, published in the FEDERAL REGISTER at 24 F.R. 4664, and subsequently amended, is further amended for Farm Unit 93, Irrigation Block 13, by deleting the second paragraph of section 16d *Residence Requirements* and substituting the following paragraph:

The time for compliance with initiation of residence may be further extended to April 1, 1965, by the Project Manager upon his determination that an extension is necessary to avoid undue hardship to the purchaser and that it will not be detrimental to the orderly development of the irrigation block.

The purpose of this amendment is to relieve undue hardship caused by a recent injury to the purchaser of Farm Unit 93, Irrigation Block 13.

FLOYD E. DOMINY,
Commissioner of Reclamation.

OCTOBER 27, 1964.

[F.R. Doc. 64–11106; Filed, Oct. 30, 1964; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File No. 24–62]

YAMIL AMADO HARON KOURI Y PEREZ

Order Temporarily Denying Export Privileges

In the matter of Yamil Amado Haron Kouri y Perez, also known as Yamil Kouri, Centro Nacional Cubano De Investigaciones Cientificas, Havana, Cuba, respondent; File No. 24–62.

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, United States Department of Commerce, pursuant to the provisions of § 382.11 of the Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations), has applied to the Compliance Commission for an order temporarily denying all export privileges to the above named respondent. It was requested that the order remain in effect for a period of sixty days pending continued investigation into the facts and transactions giving rise to the application and the commencement of such proceedings as may be deemed proper under the law against said respondent.

The Compliance Commissioner has reviewed the application and the evidence presented in support thereof and has submitted his report together with his recommendation that the application be granted and that a temporary denial order be issued for sixty days.

The evidence and recommendation of the Compliance Commissioner have been considered. The above named respondent is a resident of Havana, Cuba, and is Director of the Centro Nacional Cubano De Investigaciones Cientificas (Cuban National Center of Scientific Research). On the evidence presented there is substantial basis to believe that the respondent has participated in transactions, in countries other than the United States, for the purchase and procurement of U.S.-origin medical and scientific research equipment and supplies, for reexportation to Cuba, and that said respondent has knowingly caused, counseled, induced, and procured the doing of acts which are prohibited by the Export Control Act and regulations

thereunder. There is also reasonable basis to believe that said respondent will continue such conduct in contravention of the Export Control Act and regulations unless U.S. export privileges are temporarily denied. I find that an order temporarily denying export privileges to the respondent is reasonably necessary for the protection of the public interest and national security.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which respondent appears or participates in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondent, his successors or assigns, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to his agents and employees and to any successor and to any person, firm, corporation, or business organization with which he now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. This order shall take effect forthwith and shall remain in effect for a period of sixty days from the date hereof, unless it is hereafter extended, amended, modified, or vacated in accordance with the provisions of the United States Export Regulations.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of International Commerce, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, shipper's export declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for any such respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. A copy of this order shall be served upon the respondent.

VII. In accordance with the provisions of § 382.11(c) of the Export Regulations, the respondent may move at any time to vacate or modify this temporary denial order by filing an appropriate motion therefor, supported by evidence, with the Compliance Commissioner and may request an oral hearing thereon which, if requested, shall be held before the Compliance Commissioner in Washington, D.C. at the earliest convenient date.

This order shall become effective forthwith.

Dated: October 27, 1964.

FORREST D. HOCKERSMITH,
Director,
Office of Export Control.

[F.R. Doc. 64–11127; Filed, Oct. 30, 1964; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

MAUNA MINING CORP.

Notice of Filing of Petition Regarding Food Additive Pyrophyllite

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 4C1373) has been filed by Mauna Mining Corporation, Box 290–C, Rural Delivery 2, Gardners, Pa., proposing the issuance of a regulation to provide for the safe use of pyrophyllite as an anticaking aid, blending agent, pelleting aid, or carrier in an amount not to exceed 2 percent in complete animal feeds.

Dated: October 27, 1964.

MALCOLM R. STEPHENS,
Assistant Commissioner
for Regulations.

[F.R. Doc. 64–11114; Filed Oct. 30, 1964; 8:47 a.m.]

MICRO TRACERS, INC.

Notice of Filing of Petition Regarding Food Additives Graphite-Base Microtracers

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 5C1550) has been filed by Micro Tracers, Inc., 554 Fulton Street, San Francisco, Calif., 94102, proposing the issuance of a regulation to provide for the safe use of FD&C color-impregnated graphite in amounts not to exceed 50 parts per million of graphite in complete feeds for the quality control of mixed animal feeds.

Dated: October 26, 1964.

MALCOLM R. STEPHENS,
Assistant Commissioner
for Regulations.

[F.R. Doc. 64–11115; Filed, Oct. 30, 1964; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–163]

GENERAL DYNAMICS CORP.

Notice of Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission has issued, effective as of the date of issuance, Amendment No. 11, set forth below, to Facility License No. R–67, as amended. The license, as amended, authorizes General Dynamics Corporation to operate its TRIGA Mark F nuclear reactor located at Torrey Pines Mesa, Calif. The amendment authorizes General Dynamics Corporation to use fuel elements containing 7 to 9 weight percent uranium enriched to 20 percent in uranium-235 as described in the licensee's application for license amendment dated July 6, 1964, telegram dated August 5, 1964, and supplemental letter dated September 22, 1964.

The Commission has found that:

(1) The application for amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Chapter 1, CFR;

(2) The issuance of this amendment will not be inimical to the common defense and security or the health and safety of the public;

(3) Prior public notice of proposed issuance of this amendment is not required since the amendment does not involve significant hazard considerations different from those previously evaluated.

Within fifteen days from the date of publication of this notice in the FEDERAL REGISTER, the licensee may file a request for a hearing, and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and pe-

titions to intervene shall be filed in accordance with the provisions of the Commission's "Rules of Practice" (10 CFR Part 2). If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated July 6, 1964, a telegram dated August 5, 1964, and supplemental letter dated September 22, 1964, and (2) the Hazards Analysis prepared by the Test and Power Reactor Safety Branch of the Division of Reactor Licensing, all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington, D.C., 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 22d day of October 1964.

For the Atomic Energy Commission.

SAUL LEVINE,
Chief, Test and Power Reactor Safety Branch, Division of Reactor Licensing.

[License No. R-67; Amdt. 11]

License No. R-67, as amended, issued to General Dynamics Corp. is hereby amended in the following respects:

1. Delete from section 4.1 on page 13 of Enclosure 2 of the application dated March 1, 1960, the words "containing 8 wt-percent uranium enriched to 20 percent in U^{235}.";

2. Insert new wording to replace the wording deleted as above as follows: "The fuel alloy will contain uranium enriched to 20 percent in U-235, within the range of 7 to 9 weight percent. The average uranium content of the fuel alloy will not exceed 8.5 percent by weight.";

as described in the application for license amendment dated July 6, 1964, telegram dated August 5, 1964, and supplemental letter dated September 22, 1964.

This amendment is effective as of the date of issuance.

Date of issuance: October 22, 1964.

For the Atomic Energy Commission.

SAUL LEVINE,
Chief, Test and Power Reactor Safety Branch, Division of Reactor Licensing.

[F.R. Doc. 64-11099; Filed, Oct. 30, 1964; 8:45 a.m.]

BUREAU OF THE BUDGET

REPORT ON THE UTILIZATION OF ADVISORY COMMITTEES

Notice of Availability

OCTOBER 27, 1964.

In compliance with the provisions of Executive Order No. 11007, dated February 26, 1962, the Bureau of the Budget has prepared a report containing a list of all advisory committees utilized by the Bureau during the fiscal year 1964, including the names and affiliations of their members, a description of the function of each committee, and a statement of the dates of its meetings.

This report is available at the Office of the Administrative Assistant to the Director, Bureau of the Budget, Executive Office Building, Washington, D.C.

WILLIAM D. CAREY,
Executive Assistant Director.

[F.R. Doc. 64-11098; Filed, Oct. 30, 1964; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 15567; Order E-21449]

COLUMBIA AND JEFFERSON CITY, MO., AREA AIRLINE SERVICE AIRPORT

Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of October 1964.

The City of Columbia, Missouri has filed an application seeking amendment of Ozark Air Lines, Inc.'s certificate of public convenience and necessity so as to designate Columbia and Jefferson City, which are now designated as separate points on segments 5 and 6 of Route 107, as a single, hyphenated point. Columbia has also filed a motion for prompt action on its application.

Columbia's application states that the city proposes to construct a new airport midway between the two airports which are 29 air miles apart and which are presently used by Ozark to serve Columbia and Jefferson City. The present airport at Columbia must soon be replaced because of inadequate runway length, lack of adequate clear zones and other safety factors. Columbia is faced with the problem of seeking a new airport site and must decide whether it should select a site to serve the combined area including Jefferson City or one which would fulfill Columbia's needs alone.

Columbia contends that Ozark is re-equipping its fleet with larger, more modern aircraft and that a single airport to serve the two cities may prove more economical since Columbia and Jefferson City are served exclusively by Ozark on the same flights.

Columbia has requested prompt action on its application since it has been advised by the FAA that Federal Airport Aid Funds will not be approved for a midway site to serve both cities unless the Board designates Columbia and Jefferson City as a hyphenated point. Columbia states it has been authorized by a two-thirds majority vote of its electors to issue general obligation bonds of the city in the amount of $1,895,000 which together with requested Federal Airport Aid Funds will be used for land acquisition and airport construction.

Ozark has filed an answer in support of Columbia's motion. An answer in opposition to the motion has been filed by the Columbia Close-In Airport Committee, a voluntary organization which allegedly represents a number of local citizens.

In its answer Ozark states that it concurs in the request for a prompt hearing because its own equipment plans and future scheduling plans are contingent upon anticipated airport development. Ozark further points out that the proposed midway site will offer the carrier an opportunity to upgrade the service of Ozark as to quality and quantity of flights while simultaneously decreasing the costs of this operation to the federal government.

The Board has decided to set down Columbia's application for prompt hearing in keeping with our announced policy of giving hearing priority to single airport service consolidations which provide opportunity for economies without substantial adverse effect upon the public convenience and which can be processed with reasonable dispatch.[1] Moreover, the resolution of Columbia's airport problems apparently depends upon whether or not the Board should find that hypenation of Columbia-Jefferson City as a single point with service through a single airport is in the public interest. As noted by Ozark, a need exists for prompt resolution of the airport problem.

For the foregoing reasons the Board believes that a prompt hearing on Columbia's application is in order. As in prior cases involving possible consolidation of airline service at a single area airport we shall explore such matters as airport accessibility; historic traffic experience, as well as frequency of service and direction of traffic flow; airport capabilities; and the cost to all concerned, including the communities, the carrier, and the general public.[2]

Accordingly, it is ordered:

1. That an investigation, to be known as the Columbia and Jefferson City, Mo. Area Airline Service Airport Investigation, Docket 15567, be and it hereby is instituted pursuant to sections 204 and 401 of the Act, to determine whether the public convenience and necessity require the alteration, amendment, or modification of the certificate of Ozark Air Lines, Inc. in such a manner as to require that Columbia and Jefferson City, Missouri, be served through a single airport;

2. That a copy of this order be served upon Ozark Air Lines, Inc. and the cities of Columbia and Jefferson City, Missouri, who are made parties to this proceeding;

3. That a copy of this order be served upon the Missouri Division of Commerce and Industrial Development and the Columbia Close-In Airport Committee;

4. That the proceeding ordered herein be promptly assigned for hearing before an Examiner of the Board at a time and place hereafter to be designated; and

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[1] CAB Press Release 64-31, March 20, 1964.

[2] North Central Area Airline Service Airport Investigation, Docket 13743, Order E-18533, dated June 29, 1962. See also Eastern North Carolina Area Airline Service Airport Investigation, Docket 13728, Order E-18727, dated August 21, 1962; North Central Airlines, Inc. (Michigan Points), Docket 14288, Order E-19202, dated January 17, 1963.

5. That this order be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64-11128; Filed, Oct. 30, 1964; 8:49 a.m.]

MOHAWK AIR LINES, INC.

Service to Poughkeepsie, N.Y.; Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 19, 1964, at 10:00 a.m., e.s.t., in Room 607, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Barron Fredricks.

Dated at Washington, D.C., October 28, 1964.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 64-11129; Filed, Oct. 30, 1964; 8:49 a.m.]

CIVIL SERVICE COMMISSION

LIST OF OFFICERS EXCLUDED FROM COVERAGE

Notice of Amendment of Exclusions From Annual and Sick Leave Act of 1951, as Amended

The list of officers excluded from coverage under the Annual and Sick Leave Act of 1951, as amended, under authority of section 202(c)(1)(C) of that Act is amended by adding the position of U.S. Commissioner, New York World's Fair, to the exclusions under the Department of Commerce. Effective October 20, 1964, the list is amended as set forth below:

DEPARTMENT OF COMMERCE

1. U.S. Commissioner, New York World's Fair.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director,
Bureau of Management Services.

[F.R. Doc. 64-11126; Filed, Oct. 30, 1964; 8:49 a.m.]

FEDERAL MARITIME COMMISSION

UNITED STATES LINES CO., AND MANZ LINES JOINT SERVICE

Notice of Agreements Filed for Approval

Notice is hereby given that the following Agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of Agreement filed for approval by:

Elmer C. Maddy, Esq.
Kirlin, Campbell & Keating
One Twenty Broadway
New York, N.Y., 10005

Agreement No. 9392 between United States Lines Company and Manz Line Joint service (operating under Agreement No. 7814), provides for the institution of a joint cargo service in the trade from Australia (including Tasmania) to ports on the East and Gulf Coasts of the United States.

Dated: October 27, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-11107; Filed, Oct. 30, 1964; 8:46 a.m.]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN BRAZIL

Prohibition of Entry or Withdrawal From Warehouse

OCTOBER 27, 1964.

On October 27, 1964, the United States Government, in furtherance of the objectives of, and under the terms of, the Long Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6 relating to non-participants, informed the Government of Brazil that pending the conclusion of discussions on Brazil's exports of cotton textiles to the United States, it was renewing for an additional twelve month period beginning October 28, 1964, and extending through October 27, 1965, the restraint on imports to the United States of cotton textiles in Category 9, produced or manufactured in Brazil.

There is published below a letter of October 23, 1964, from the Chairman, President's Cabinet Textile Advisory Committee, to the Commissioner of Customs, prohibiting, effective October 28, 1964, for the twelve month period extending through October 27, 1965, the entry or withdrawal from warehouse for consumption in the United States of cotton textile products in Category 9 produced or manufactured in Brazil, in excess of 525,000 square yards.

JAMES S. LOVE, Jr.,
Chairman, Interagency Textile Administrative Committee, and Deputy to the Secretary of Commerce for Textile Programs.

THE SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

Washington 25, D.C.
OCTOBER 23, 1964.

COMMISSIONER OF CUSTOMS,
DEPARTMENT OF THE TREASURY,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Long Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6 relating to non-participants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, you are directed to prohibit, effective October 28, 1964, and for the twelve month period extending through October 27, 1965, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton textile products in Category 9, produced or manufactured in Brazil in excess of the following level of restraint:

Category:	*12-month level of restraint*
9	525,000 sq. yds.

Entries of cotton textile products in Category 9, produced or manufactured in Brazil, which have been exported to the United States from Brazil, prior to October 28, 1964, shall be subject to this directive since the level for the period October 28, 1963, through October 27, 1964, has been exhausted by previous entries.

A detailed description of Category 9 in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on October 1, 1963 (28 F.R. 10551).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Brazil and with respect to imports of cotton textile products from Brazil have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of Section 4 of the Administrative Procedure Act. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

C. D. MARTIN, Jr.,
Acting Secretary of Commerce, and Acting Chairman, President's Cabinet Textile Advisory Committee.

[F.R. Doc. 64-11118; Filed, Oct. 30, 1964; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1679]

STERLING PRECISION CORP., AND DESIGNATRONICS, INC.

Notice of Filing of Application for Order Exempting Proposed Transactions

OCTOBER 27, 1964.

Notice is hereby given that Sterling Precision Corporation ("Sterling") 103 Park Avenue, New York, N.Y., a company controlled by The Equity Corporation ("Equity"), a registered closed-end, non-diversified investment company and Designatronics, Inc. ("Designatronics") 76 East 2d Street, Mineola, Long Island, N.Y., a company controlled by Sterling, have filed a joint application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of section 17(a) of the Act the proposed purchase by Designatronics from Sterling of (a) certain real property for the sum of $103,500 in cash and (b) 115,937 shares of 4 percent Cumulative Preferred Stock, $10.00 par value, of Designatronics for $150,000 in cash and $775,000 principal amount of Designatronics Series 1979 Debenture Bonds, and the assignment by Sterling to Designatronics of any interest of Sterling in certain U.S. patents related to assets sold to Designatronics by Sterling in 1961. All interested persons are referred to the application, which is on file with the Commission, for a full statement of the applicants' representations which are summarized below.

Equity owns in the aggregate approximately 11.8 percent of the outstanding voting securities of Sterling. Upon conversion into common stock of all debentures and preferred stock of Sterling owned by Equity, Equity would own approximately 29.75 percent of the then outstanding stock. For purposes of the application Sterling is deemed to be controlled by Equity. Sterling is in turn the owner of approximately 30 percent of the outstanding voting securities of Designatronics.

Sterling is primarily engaged in the manufacture of fire trucks and related apparatus and its stock is listed on the American Stock Exchange. Designatronics is principally engaged in the manufacture and sale of precision electro-mechanical products and its stock is traded over-the-counter. At August 31, 1964, Designatronics had outstanding $185,125 principal amount of 6 percent Convertible Debentures, due December 1, 1975, 115,937 shares of Preferred Stock (all of which are owned by Sterling) and 280,000 shares of Common Stock (none of which are owned by Sterling). The shares of Preferred Stock and Common Stock of Designatronics are entitled to one vote each on all matters.

Sterling proposes to sell and Designatronics proposes to purchase from Sterling all of the Designatronics Preferred in return for the payment to Sterling by Designatronics of $150,000 in cash and the issuance to Sterling by Designatronics of $775,000 principal amount of Series 1979 Debenture Bonds of Designatronics. Such debentures mature in semi-annual installments from October 1964 through April 1979 and bear interest at the rate of 4¾ percent through March 31, 1969, and at the rate of 6 percent thereafter until maturity. Sterling also proposes to sell and Designatronics proposes to purchase from Sterling certain real property located at 17 Matinecock Avenue, Port Washington, N.Y., for the sum of $103,500 in cash.

The Designatronics Preferred was acquired by Sterling in 1961 in connection with the sale by Sterling to Designatronics of assets of Sterling's instrument division. In connection with such transaction, Designatronics also leased from Sterling for a five-year term the premises at 17 Matinecock Avenue, Port Washington, New York at an annual rental of $18,750. There is now pending in New York an action involving claims by Designatronics against Sterling arising out of the aforementioned acquisition in 1961 by Designatronics of assets of Sterling. Another action is pending in the same court involving a voting agreement entered into between Sterling and certain stockholders of Designatronics. There is also pending in that court an action in which the plaintiff, Wilco Equipment Corporation ("Wilco"), seeks specific performance of an alleged contract between plaintiff and Designatronics, as agent for Sterling, for the sale of the above-mentioned real property for $106,000 and in which Designatronics has asserted certain cross-claims against Sterling.

For the purpose of settling such litigation and various claims against each other, Sterling and Designatronics have entered into a settlement agreement dated February 27, 1964, which provides, in substance, for the exchange of general releases, cancellation of the lease, an undertaking by Designatronics to attempt to settle the suit brought by Wilco, the assignment by Sterling to Designatronics of any interest of Sterling in certain U.S. patents related to the assets sold to Designatronics, the purchase of the real property by Designatronics and the purchase and cancellation by Designatronics of the Designatronics Preferred Stock.

The consideration to be received by Sterling upon the sale of the Designatronics Preferred Stock ($925,000) represents $234,000 less than the liquidating claim of such stock. The book value of the stock, however, is $909,368. The basis of the determination by the Boards of Directors of Sterling and Designatronics that the selling price of the real property ($103,500) is the fair value thereof is that such price is related to the present carrying value of the property on the books of Sterling ($108,863) and is approximately the price proposed to be paid for the property by Wilco, an independent party. Sterling and Designatronics also place a value of approximately $56,000 on the cancellation of the lease between Sterling and Designatronics.

Sterling and Designatronics represent that the proposed transactions are reasonable and fair, that they are the result of arm's length negotiation and that they will not adversely affect the interest of any security holder of either Sterling or Designatronics.

Section 17(a) of the Act, insofar as here pertinent, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to, or purchasing from, such registered company or any company controlled by such company securities or property, unless the Commission upon application pursuant to section 17(b), grants an exemption from section 17(a) upon a finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than November 13, 1964, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicants at the addresses stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 64-11101; Filed, Oct. 30, 1964; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 1070]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 28, 1964.

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 66950. By order of October 21, 1964, the Transfer Board approved the transfer to Stefan P. Ponek and Elizabeth M. Ponek, a partnership, doing business as Ponek Movers, Bellows Falls, Vt., of the operating rights in Certificates Nos. MC 81957 and MC 81957 Sub 2, issued May 27, 1953 and May 24, 1950, respectively, to Albert D. Bushey, doing business as Rugg's Express, Bellows Falls, Vt., authorizing the transportation, over irregular routes, of: Household goods, as defined by the Commission, between Keene, N.H., and points in Vermont, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey, in a radial movement. Andre J. Barbeau, 795 Elm Street, Manchester, N.H., attorney for applicants.

No. MC–FC 66970. By order of October 21, 1964, the Transfer Board approved the transfer to Lloyd H. Bowser and Harold R. Bowser, a partnership, doing business as Bowser and Campbell, Knox, Pa., of the operating rights in Permit No. MC 1218, issued May 19, 1949, to Lloyd H. Bowser and Stella Campbell, a partnership, doing business as Bowser and Campbell, Knox, Pa., authorizing the transportation, over irregular routes, of: Glass containers and empty packing cartons, from specified points in Pennsylvania to points in described portions of Ohio, West Virginia, and New York, and empty cartons, on return. Wilhelmina Boersma, 2850, Penobscot Building, Detroit, Mich., 48226, attorney for applicants.

No. MC–FC 66975. By order of October 21, 1964, the Transfer Board approved the transfer to Frank J. Lewis and Samuel Braunstein, a partnership, doing business as Meehan Express, Schenectady, N.Y., of the operating rights in Certificate No. MC 121099 Sub 2, issued June 19, 1964, and the operating rights evidenced by the Certificate of Registration No. MC 121099 Sub 1, issued November 15, 1963, both in the name of Frank J. Lewis, doing business as Meehan Express, Schenectady, N.Y., and authorizing the transportation of general commodities, with certain exceptions, over regular routes, serving intermediate points, between Scotia, N.Y., and Troy and Rensselaer, N.Y., including service to those named points. John J. Brady, Jr., 75 State Street, Albany, N.Y., attorney for applicants.

No. MC–FC 67057. By order of October 21, 1964, the Transfer Board approved the transfer to Merle R. Ferwerda and Luetta L. Ferwerda, a partnership, doing business as Springfield-Sioux Falls Bus Line, Springfield, S. Dak., of the operating rights claimed in No. MC 99476 Sub 1, under the "grandfather" clause of Section 206(a)(7)(B), Interstate Commerce Act by Harold E. Halsey and Wilma L. Halsey, a partnership, doing business as Springfield-Sioux Falls Bus Line, Springfield, S. Dak., pursuant to proceedings in No. MC–FC 65905, corresponding to the grant of intrastate authority issued by the Public Service Commission of South Dakota, in No. 521, covering the transportation of: Passengers, baggage, and light express, between Springfield and Sioux Falls, S. Dak., over specified regular routes, serving named intermediate points, and conducting charter operations between the points authorized, solely within the State of South Dakota. Elmer E. Gemar, Springfield, S. Dak., attorney for applicants.

No. MC–FC 67059. By order of October 21, 1964, the Transfer Board approved the transfer to Frank Champer, Malden, Mass., of the operating rights in Permits Nos. MC 94548, MC 94548 Sub 1, and MC 94548 Sub 2, issued May 1, 1941, May 11, 1940, and August 31, 1949, in the name of Peter D'Ambrosio, doing business as, D'Ambrosio Transportation Company, Revere, Mass., authorizing the transportation, over irregular routes, of: New furniture, from Everett, Somerville, and Melrose, Mass., as well as radial movement, between certain points, to points within 200 miles of said points, in Maine, New Hampshire, Connecticut, and Rhode Island, and to all points in New York and Vermont. Francis J. Peralta, Jr., 7 Willow Street, Lynn, Mass., attorney for applicants.

No. MC–FC 67086. By order of October 20, 1964, the Transfer Board approved the transfer to Clifford Jerde, Inc., DeKalb, Ill., of Certificate of Registration No. MC 120535 Sub 1, issued November 6, 1963, to Clifford Jerde, DeKalb, Ill., authorizing the transportation of: Farm products, coal, limestone, sand, gravel, household goods, livestock and commodities general within a fifty (50) mile radius of 620 Prospect Street, DeKalb, Ill., and to transport such property to or from any point outside of such authorized area of operation for a shipper or shippers within such area. James F. Flanagan, 111 West Washington Street, Chicago, Ill., 60602, attorney for applicants.

No. MC–FC 67163. By order of October 22, 1964, the Transfer Board approved the transfer to D. Q. Wise & Co., Inc., Pawhuska, Okla., of Certificate in No. MC 42011, issued May 27, 1948, to D. Q. Wise, doing business as D. Q. Wise & Co., Pawhuska, Okla., authorizing the transportation of: Farm machinery and feed in truckload lots, from Kansas City, Mo., and Kansas City, Kans., to points in Oklahoma as specified; binder twine in truckload lots, from Moline, Kans., to points in Oklahoma as specified; oil, water, and gas-well outfits and supplies, from points in Oklahoma, to points in Kansas and Texas, clay products other than pottery, from Tulsa and Cleveland, Okla., to points in Arkansas as specified; and from Malvern and Perla, Ark., to points in Oklahoma as specified; brick, tile and clay pipe in truckload lots, between points in Oklahoma, Arkansas, Kansas, and those in Missouri and Texas as specified; heavy machinery and parts thereof in truckload lots, from Chicago, Ill., Milwaukee, Wis., Indianapolis and Evansville, Ind., to points in Oklahoma, and between points in Oklahoma on the one hand, and, on the other, points in Arkansas and Kansas and those in Missouri and Texas as specified; building material in truckload lots, between Malvern and Perla, Ark., and points in Arkansas, Oklahoma and Kansas as specified; livestock in truckload lots, between specified points in Oklahoma on the one hand, and, on the other, Kansas City, Kans., Kansas City, Mo., and points in Kansas as specified; machinery, materials, equipment, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, and their products and by-products, and machinery, materials, equipment, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including stringing and picking up thereof as excepted, between points in Kansas, Oklahoma, and Texas, and between points in Arkansas, on the one hand, and, on the other, points in Kansas and Oklahoma; and buildings, setup, and furnished, including component parts thereof when shipped therewith, from Wichita, Kans., to points in Arizona, Arkansas, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wyoming. Wilburn L. Williamson, 450 American National Building, Oklahoma City, Okla., 73102, attorney for applicants.

No. MC–FC 67175. By order of October 22, 1964, the Transfer Board approved the transfer to Sunnyland Stages, Inc., Springfield, Mo., of Certificates in Nos. MC 52479 and MC 52479 Sub 1, issued June 21, 1950 and June 15, 1939, respectively, to Ford Barnes, doing business as Sunnyland Stages, Springfield, Mo., authorizing the transportation of: Passengers and their baggage, and express, newspapers, and mail, in the same vehicle with passengers, between Springfield, Mo., and Harrison, Ark., serving intermediate points; and during the season extending from the 15th of May to the 30th of September, inclusive, between junction U.S. Highway 65 and Missouri Highway 76 and Branson, Mo., serving all intermediate points and the off-route point of Rockaway Beach, Mo. Louis W. Cowan, 221 Woodruff Building, Springfield, Mo., attorney for applicants.

No. MC–FC 67233. By order of October 21, 1964, the Transfer Board approved the transfer to Joe Traynor, doing business as Joe Traynor Trucking, Plum City, Wis., of Certificates Nos. MC 51021 and MC 51021 Sub 2, issued April 23, 1956 and January 16, 1961, respectively, to Charles Taylor, Plum City, Wis., authorizing the transportation, over irregular routes, of livestock and agricultural commodities, from points in El Paso, Union, Salem, Rock Elm, and Maiden Rock in Pierce County, Wis., to

South St. Paul and Red Wing, Minn.; general commodities, excluding household goods and commodities in bulk, from South St. Paul, St. Paul, Minneapolis, Hastings, Red Wing, Four Corners, New Brighton, and Hopkins, Minn., to points in Wisconsin specified above, not including the incorporated villages of Plum City and Maiden Rock, Wis.; feed, between Ellsworth, Wis., on the one hand, and, on the other, South St. Paul, St. Paul, Minneapolis, Hastings, Red Wing, Four Corners, New Brighton, and Hopkins, Minn.; household goods and emigrant movables, between South St. Paul, St. Paul, Minneapolis, Hastings, Red Wing, Four Corners, New Brighton, and Hopkins, Minn., on the one hand, and, on the other, points in El Paso, Union, Salem, Rock Elm, and Maiden Rock, in Pierce County, Wis.; threshing machinery and farm machinery, from Des Moines, Iowa, to points in Goodhue County, Minn., and those in Pierce, St. Croix, Pepin, Buffalo, and Dunn Counties, Wis.; and household goods, emigrant movables, and general commodities, excluding commodities in bulk, between points in Maiden Rock, Salem, Rock Elm, and Union in Pierce County, Wis., and those in Waterville, Pepin County, Wis., on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, Newport, Red Wing, and Lake City, Minn. A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn., representative for applicants.

No. MC-FC 67274. By order of October 21, 1964, the Transfer Board approved the transfer to William T. Geipe Moving & Storage Co., Inc., 1700 Aiken Street, Baltimore, Md., of the operating rights issued by the Commission June 19, 1961, under Certificate No. MC 1813, to William T. Geipe, doing business as William T. Geipe Moving & Storage Company, Baltimore, Md., authorizing the transportation, over irregular routes, of household goods, between Baltimore, Md., and points within 6 miles of Baltimore, on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, and the District of Columbia.

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

[F.R. Doc. 64-11117; Filed, Oct. 30, 1964; 8:48 a.m.]

Bureau of Finance

[Notice No. 2]

FINANCE APPLICATIONS

OCTOBER 28, 1964.

The following publications are governed by the Interstate Commerce Commission's General Requirements governing notice of filing of applications under sections 5(2), 20a except (12), 20b and 214 of the Interstate Commerce Act. The Commission's order of May 20, 1964, providing for such publication of notice, was published in the FEDERAL REGISTER issue of July 31, 1964 (29 F.R. 11126) and became effective October 1, 1964.

All hearings and prehearing conferences, if any, will be called at 9:30 a.m., U.S. standard time (or 9:30 a.m., local daylight savings time, if that time is observed), unless otherwise specified.

F.D. No. 23339—By application filed October 20, 1964, Southern Railway Company, Post Office Box 1808, Washington, D.C., 20013, seeks authority under Section 20a to assume obligation and liability in respect of $2,730,000 principal amount of Southern Railway Equipment Trust No. 2 of 1964 Certificates. Applicant is authorized to operate in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Illinois, and Indiana. Applicant's attorney: Seddon G. Boxley, general solicitor, Southern Railway Company, Post Office Box 1808, Washington, D.C., 20013. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23340—By application filed October 20, 1964, Central Freight Lines, Inc., 303 South 12th Street, Waco, Tex., seeks authority under section 214 of the Act to issue a long term note in a total amount not to exceed $263,000, bearing interest at the rate of 5¼ percent per annum. Applicant is authorized to operate within the State of Texas. Applicant's attorneys: W. W. Callan, Jr., vice president, Central Freight Lines, Inc., Post Office Box 238, Waco, Tex. and Roland Rice, Rice, Carpenter and Carraway, Suite 618 Perpetual Building, 1111 E Street NW., Washington, D.C., 20004. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23341—By application filed October 20, 1964, Central Freight Lines, Inc., 303 South 12th Street, Waco, Tex., seeks authority under section 214 of the Act to issue a long term note in a total amount not exceeding $775,000, bearing interest at the rate of 5.32258 percent per annum. Applicant is authorized to operate within the State of Texas. Applicant's attorneys: W. W. Callan, Jr., vice president, Central Freight Lines, Inc., Post Office Box 238, Waco, Tex. and Roland Rice, Rice, Carpenter and Carraway, Suite 618 Perpetual Building, 1111 E Street NW., Washington, D.C., 20004. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23346—By application filed October 16, 1964, St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas, seeks approval under section 5(2) of the Act (1) of a proposed agreement with Southern Pacific Company by which applicants would acquire the right to use Southern Pacific Company's lines for through operation of main-line trains between Plano and Dallas, Tex., including the terminal incidental thereto known as Miller Yard, as well as tracks owned by Missouri-Kansas-Texas Railroad Company over which Southern Pacific Company has trackage rights and the right to admit applicants as its tenant, and (2) approval of operation of main-line trains by St. Louis Southwestern Railway Company over 283 feet of a connecting track built and maintained at its expense, but owned by and situated on property of Missouri-Kansas-Texas Railroad Company. (St. Louis Southwestern Railway Company presently uses Miller Yard for switching purposes only, under a joint switching agreement with Southern Pacific Company, and also uses the connecting track of Missouri-Kansas-Texas Railroad Company for switching purposes only under a contract dated May 1, 1963, which, by its terms, allows use by main-line trains also.) Applicant's attorney: Clyde W. Fiddes, general counsel, St. Louis Southwestern Railway Company, 1517 West Front Street, Tyler, Tex. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23353—By application filed October 20, 1964 Harris County Houston Ship Channel Navigation District, seeks authority to purchase all the capital stock of Northside Belt Railway Company, being 1,000 shares of common stock, par value of $100 per share, for a cash consideration of $350,000. Applicant's attorneys: J. L. Lockett, Jr., Navigation District Counsel, Post Office Box 2562, Houston, Tex., 77001 and Tom M. Davis, Special Counsel for Navigation District, 1600 Esperson Building, Houston, Tex., 77002. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23354—By application filed October 26, 1964, Jones Motor Co., Inc., Spring City, Pa., seeks authority to issue 25,942 shares of common stock with par value of $2.00 per share as a 5 percent dividend on the outstanding common stock of the company to stockholders of record, November 30, 1964. Applicant operates in the States of Pennsylvania, New York, New Jersey, Connecticut, West Virginia, Virginia, North Carolina, Tennessee, Rhode Island, Massachusetts, Maryland, Ohio, Michigan, Indiana, Illinois, and in the District of Columbia. Applicant's attorneys: Harry A. Hershey, senior vice president, Jones Motor Co., Inc., Spring City, Pa. and Roland Rice, Rice, Carpernter and Carraway, Suite 618 Perpetual Building, 1111 E Street NW., Washington, D.C., 20004. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

By the Commission.

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

[F.R. Doc. 64-11155; Filed, Oct. 30, 1964; 8:50 a.m.]

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